

TENTH ANNIVERSARY

AFTER THE PENTAGON PAPERS • SPECIAL ISSUE

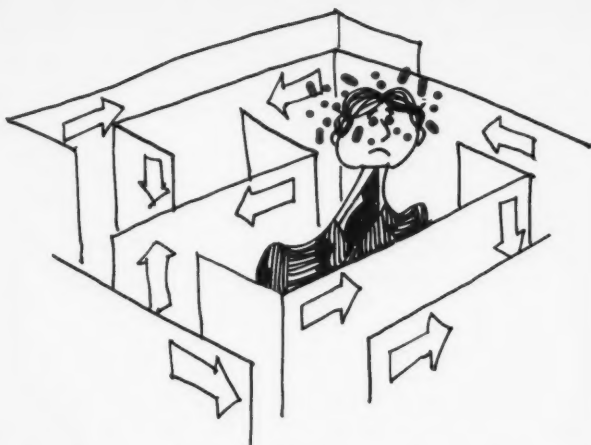
COLUMBIA JOURNALISM REVIEW

SEPTEMBER/OCTOBER 1971

THE FIRST AMENDMENT ON TRIAL

Ben H. Bagdikian
Benjamin Bradlee
Thomas I. Emerson
Max Frankel
Philip L. Geyelin
David Kraslow
James McCartney
Alan L. Otten
A. M. Rosenthal
William Small
Tom Wicker
Thomas Winship
Jules Witcover

... to assess the performance of journalism in all its forms, to call attention to its shortcomings and strengths, and to help define—or redefine—standards of honest, responsible service . . .
... to help stimulate continuing improvement in the profession and to speak out for what is right, fair, and decent.



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Passing comment

The unresolved battle

The press and broadcasting won two severely qualified victories this past summer. The Supreme Court upheld the right of the press, in a particular instance, to publish material the Government had designated as secret. The House of Representatives decided, indecisively, that a broadcaster did not have to surrender program raw materials.

In the long run, it may turn out that these victories were less significant than the challenges they revealed to what journalists have long assumed were Constitutional prerogatives. The First Amendment has been taken more or less for granted as a signpost under which the news media had maximum freedom to report and publish. It seemed to guarantee that government—except in a major, declared war—could not exercise prior restraint on publication or, conversely, require disclosure of unpublished information. The recent tests centering on the New York *Times* and the Columbia Broadcasting System reveal that a substantial minority in power think otherwise.

Superficially, it might appear that news organizations precipitated the crises by trying to exercise their prerogatives in extreme or novel ways. But it is equally possible that the hostile official response arose from the increasingly widespread notion that one of the things wrong with American society is that the mass media have begun to report its faults and failures too candidly.

Nearly twenty-five years ago, the Hutchins Commission on Freedom of the Press warned that mass media insufficiently responsive to the demands of society might be brought to heel. For its trouble, the commission was condemned as advocating government control of the press; it was doing no such thing, of course. But now, in a curiously backhanded way, the prophecy has

edged toward fulfillment: news organizations, unyielding to those segments of government that see the media as the opposition, have come under the threat of unprecedented controls.

Should not the news media be responsive to the society that sustains them? The answer, of course, is yes. But the recent impulses toward suppression tend to dampen the very trends that have made news organizations in recent years a more useful and flexible social instrument: increased independence of official views, rising curiosity about neglected injustices, freer forms of expression. Evidently a good slice of official Washington would breathe easier if journalism could be driven back toward the old passivity and a readier acceptance of the notion that the country is in the best of hands, no matter who is in power.

In standing firm against such regression, the principals in the recent cases have earned the gratitude of all who prize the independence of journalism: the *Times*, for its bold, imaginative handling of an unusual opportunity; the Washington *Post*, for taking the decision that ensured that the *Times* would not stand alone against the power of the government; and CBS, for its persistence in seeking First Amendment rights under the shadow of federal retaliation. These organizations and their allies in journalism may have helped lead journalism closer to being an estate that can be auditor of society's running accounts.

The foggy landmark

What kind of guidance can journalists draw from the Supreme Court's split decision on the Government's endeavor to halt publication of the Pentagon Papers? It is useful to compare it, as does Nathan Lewin in the *New Republic* of July 10, with the previous Constitutional case involving the *Times* as a defendant, the *Sullivan* libel decision of 1964. (Lewin calls the 1964 and 1971 cases *Times I* and *Times II*.) There are similarities. Both cases produced decisions guaranteeing press liberties—the 1964 case leading to a near-demise of libel laws, the 1971 decision asserting that the federal government had no automatic

grant of power to prevent publication. (On June 7, the Supreme Court again extended the 1964 decision by ruling that private individuals engaged in matters of public interest could be discussed with the same freedom that had previously applied to public officials.)

But the contrasts are more striking. In 1964 the Court applied so sweeping a rule to the law of libel that it undermined the whole structure. In 1971, although future effects remain uncertain, it hardly appears that the press has won such a charter. Only a minority of the Court spoke up without qualification for the First Amendment; a majority of the nine left open to the possibility that in other circumstances it might well let the Government enjoin or otherwise punish the press. To put it another way: in one instance, the Court staked out a vast tract; in the other, it marked only a tiny redoubt. [See remarks by Yale law professor Thomas I. Emerson, page 34.]

The differing subject matter of the two cases provides the most telling contrast. Constitutional scholars have pointed out that the decision in *Times I* was intimately connected with the substance of the issue; that is, the Court advocated the widest possible freedom of discussion in part because the subject of discussion was the civil rights movement. The hesitancy in *Times II* must be taken as reflecting an uncertainty about providing the same kind of charter for subjects that have been considerably restricted in this and other countries—foreign policy, military policy, and ideology.

Just as *Times I* came at a climax of the struggle for civil equality, *Times II* fell at the end of a decade of contention over the claims of national security on news organizations. It is worth recalling that the Nixon Administration is scarcely the first to charge the press with ignoring the national security question. In April, 1961, President Kennedy urged newspaper publishers to be more cooperative in Cold War battles. (This speech, rather than the more frequently quoted but less authenticated regret that the *Times* didn't expose the Bay of Pigs, was the official position of the Kennedy Administration.) The events of the years that followed gradually sharpened the issue, forcing the news media into an

ever more open recognition that their own definitions of national welfare and public need could not always coincide with those of administrations in power. The publication of the Pentagon documents was an ultimate recognition that the divergence had reached a point where what the Government defined as necessary concealment was seen, with equal fervor, by the media as crying out for revelation.

The Court refused to give this position its outright sanction. Thus the Nixon Administration kept the way open for other actions against the media and even, it might be said, scored a minor success in imposing a prior restraint that lasted, in the case of the *Times*, a full two weeks; in addition, the Government gained permission to have highly unusual secret proceedings in the lower courts. As Justice Brennan observed: "Every restraint in this case, whatever its form, has violated the First Amendment." The press won out, but not by much. It must look to future tests with uneasiness.

Skilled workmen

The *Times* series on the Pentagon study stands as a remarkable piece of journalism—flawed, like its sources, but still a striking presentation of processes of thought and action near the heart of the American government. Considering the pitfalls, Neil Sheehan and his supporting staff of *Times* writers and editors performed a miracle of organization and clarity. The *Times* must be granted credit: few newspapers would have invested manpower and money on a scale to match the massiveness of the Pentagon Papers. (The *Washington Post* and *Boston Globe*, with far less time to prepare their exclusive stories, also were unstinting in allocating journalistic resources to the task—with singularly authoritative and readable results.) To have done less would have been disastrous, as many a lesser effort showed.

It is against a background of respect for this achievement that the *Times* team must be faulted on what it called "a major disclosure" of the study—that the Johnson Administration reached a

"general consensus" to attack North Vietnam by air as early as September 7, 1964. Indeed, this assertion constitutes the centerpiece in the general conclusion that government officials deceived the public about their intentions in Southeast Asia.

In describing this incident, the *Times* writer followed the conclusion of an anonymous Pentagon analyst. But only a strained reading of the two documents on which the analyst based his conclusion (both reprinted by the *Times*) supports such a contention. The paragraph cited by the analyst refers only to "larger decisions," and not to bombing. With so much elsewhere in the study that shows the Johnson Administration planning for an expanded war before it took the public into its confidence, it seems unfortunate that in this instance the *Times* overreached.

Shadows cast backward

Inevitably, the revelations in the Pentagon papers offer a tacit commentary on past performance of journalists in Washington and Saigon. Critiques to date have ranged from bemoaning the timidity or ineptitude of American correspondents in challenging the Government to self-satisfied conclusions that everything in the documents had been in the news at one time or another.

Indeed, there do appear to be few outright surprises in the collection. But the essential difference is that the first time around most of the material issued from one segment or another of the authorized leak system—Washington pipelines offering classified information that serves the interests of an agency or individual while protecting the leaker's identity. In the new collection—and this may be a critical change—the authors are identified by name. (If the functioning of this system were better understood by the public—that is, if the news media had cared to let the public in on their little secret—the publication of the Pentagon Papers might not have been so readily confused among the ill-informed with espionage or treason.)

These points have been adroitly made by Richard Harwood, the *Washington Post's* in-

house commentator on press problems. Of war-plans stories in the mid-1960s, Harwood said:

Week after week similar stories were published and given prominent space in the newspaper. But if the opinion polls at that time are valid, as one presumes, the public was simply not interested. Nor were most members of Congress.

There was assuredly no outcry and no demand for court injunctions from the Administration against the "security breaches" involved in many of these newspaper reports. On the contrary, it is obvious in retrospect that various factions in the Administration were deliberately and consciously "leaking" top-secret plans and recommendations in order to build support for future U.S. actions. And it seems obvious, in retrospect, that both the Administration and the newspapers were deluding themselves in assuming that "leaks" were an adequate substitute for the kind of public awakening and education that sometimes arises out of vigorous public debate by public officials.

What may have been happening, as Douglass Cater has suggested in another context, is that the media were having more influence in making up minds within the Government than in influencing the public whose support the Administration was seeking.

It is now seven years later. People in the news business are now indicting themselves—wrongly—for not "telling the truth." Politicians, who ought to know better, are claiming that no one told them what was going on. And the Administration charges, years after the fact, that security is breached by the recounting of ancient history. It is a strange spectacle.

Tired reflexes

A curiosity of the breaking of the Pentagon Papers story was the sluggish—even dumbfounded—response of much of American journalism. The *Times* team that had worked on the papers found, to its surprise and chagrin, that instead of being an instant sensation their findings fell into an echoing void. All through Sunday, June 13—the first day of publication—and Monday, June 14, there was near-silence on the air and a near-black-out in newspapers. Only on Tuesday, when the Government reacted strongly, did lethargy end.

The *Times* was to blame, in part, for this response. In maintaining secrecy that could serve as a model for the CIA, it restrained its news syndi-

cate from issuing advance publicity or alerting clients. In addition, the understated, modest display of the study misled some of those who saw the Sunday paper. Those who watch the ramparts of American journalism on weekends aren't always the first team, and in this case many failed to pick up the cue. The *Denver Post* and the *Louisville Courier-Journal* were among the exceptional few that spotted the *Times* coup immediately and played the story prominently in Sunday editions.

The response on the air was equally spotty. Guest reporters on ABC and CBS Sunday interview programs failed to ask Senator Hubert H. Humphrey or Secretary of Defense Melvin Laird any questions about the papers, although the latter had come prepared. Nor did CBS or ABC news programs arouse themselves to the story during the weekend. By contrast NBC News had ten minutes about the Pentagon Papers on its Sunday evening news program, and gave the story equally prominent treatment on Monday and Tuesday.

The preponderance of newspapers and broadcasters were victimized by the wire services. Not only did AP and UPI react slowly, but they tended to back into the story. In one of his periodic "Letters from the Editor," Robert W. Smith of the Minneapolis *Star* offered a semi-apology for his paper's early coverage, explaining that the editors had considered early wire stories "almost totally inadequate" because they focused on Pentagon reaction rather than the basic story. Smith wrote: "Those of our readers who read no other daily newspaper . . . were being given 'follow' and 'reaction' reports without having first been informed about the matter which our reports were 'following', or to which official Washington was reacting."

Getting into the act

Before passing on to other matters, it is necessary to take note here of two gentlemen who, seeing the klieg lights focused on the *Times*, could not bear to have so little fall upon themselves.

Sidney E. Zion, who was editorial commander of the late *Scanlan's* magazine, got himself on a

New York radio program to reveal the identity of Daniel Ellsberg as the prime leaker of the Pentagon Papers. Zion spent days afterward portraying himself as a simple little old digging reporter, the object of harsh words and discrimination merely because he was no longer with a news organization.

William F. Buckley, Jr., had his *National Review* concoct, purportedly as a kind of lark, some Pentagon Papers of its own. Was he trying to suggest that the *Times* had forged its documents? That the court crisis through which the press had just passed was to be taken lightly? No, he was simply playing a game, showing that he, too, could be part of the fun.

CBS: off the hook

The *Times* case blew up a sudden storm and dissipated; in that instance, the organs of government could claim the excuse of haste for their blunders. But no such excuses exist for the House of Representatives committee which tried to cite CBS and its president, Dr. Frank Stanton, for contempt of Congress in retaliation against the documentary *The Selling of the Pentagon* [see *PASSING COMMENT*, May/June, July/August]. It is hard to find a hint that committee chairman Harley O. Staggers of West Virginia or his supporters recognize a Constitutional issue even when it is thrust in their faces. The ranking Republican on the committee, William L. Springer of Illinois, put it bluntly enough: "We're not interested in the First Amendment, we're interested in deceit."

The *Review* has already stated its position in this controversy, and will not elaborate here on its support of CBS's freedom to make its own journalistic judgments. If CBS had lost the July 13 vote on the contempt issue, the claims of broadcasters to Constitutional protection might have suffered a damaging blow. As it happened, there was evidence that substantial minorities in both parties are still willing to keep broadcasting out from under the Constitutional umbrella as long as it "misbehaves."

Harry Reasoner of ABC pointed the moral in

bristling fashion a few days before the House vote: "We are not second-class citizens, and when we do our job we should think only of high professional responsibilities. We should not have to think, what will Mr. Staggers say? And we won't."

Darts and laurels

Laurel: To Washington reporters Forrest Boyd of Mutual, J. F. terHorst of the *Detroit News*, and James Deakin of the *St. Louis Post-Dispatch* for employing—for almost the first time since Presidential press conferences went on live television—concerted followup questioning of the President. The resulting exchanges, in the only conference in June, were enlightening. The question is, will the President permit it to be repeated?

Dart: To the numerous newspapers which accepted the advertisement shown here without requiring any identification of the advertiser or his address. The ad was evidently placed by the American Medical Association, which apparently hesitates to use its name in public.

We accept, Mr. President...

America's Doctors of Medicine, meeting in their one hundred and twentieth annual convention in Atlantic City, were challenged by you to assume a role of leadership in three areas of vital concern to our citizens and the health and well-being of our society:

One concern for the nation's health is our entire professional life. We live it—we work at it—it is the singular objective of our time, our lives and our energy. Your challenge is one that we understand—one that we can meet and we accept it eagerly—with enthusiasm and dedication.

You challenged us to continue the leadership in a national campaign to shape the nation's attitude toward drugs—discourage America to the serious dangers of drug abuse.

We accept the challenge.

You challenged us to improve America's health care system—to design a system that will insure freedom of choice, dedication to quality—consistent relief for our citizens and protection against overcharge.

We accept the challenge.

You challenged us to contribute to the health of America—not just to physical health, but to its mental health, to its moral health and to its character. Be our training, our education and our daily involvement with the lives of people, we are equipped to do this.

And we accept this challenge.

You asked us to give...of our time...of our energy...of our training and dedication.

We give it gladly.

For we share your belief in America. We share your faith in our people and in our future. We share your wish that all of our people should enjoy decent standards of food, shelter, education and health. We share your thoughts that the greatest reward for doing so is the opportunity for doing more.

For more than one hundred and twenty years America's Doctors of Medicine have worked together to guard the nation's health, and to create the world's highest standard of medical care for all of our people and we will continue to do so.

To this we have added new programs designed to improve the delivery of health care to the poor and the underprivileged, to increase the number of doctors and to provide more care for more people through the use of physicians' assistants.

We have done much. Much remains to be done.

We accept your challenge...

America's Doctors of Medicine

Laurel: To the *Salt Lake Tribune*, for its "Common Carrier" experiment, which offers articles written by readers and selected by a panel of five "editors" selected from the community at large.

Dart: To the *New York Times Magazine*, for running a major profile of Frank L. Rizzo, Democratic candidate for mayor of Philadelphia, by a writer who was working for one of Rizzo's opponents. It is like assigning coverage of the Democratic nominee for President to Herbert Klein.

Laurel: To members of the Madison, Wis., Newspaper Guild who turned in their police cards because they did "not believe that reporters should be licensed by the police to protect their Constitutional rights." The action was also a protest against widespread police use of undercover agents bearing press credentials.

Dart: To the *Boston Globe* and *Boston Herald-Traveler* for failing to name Jordan Marsh Company, one of the biggest department stores and newspaper advertisers in the city, in accounts of a major court decision involving the store's credit practices. (The omission was pointed out by Stanford N. Sesser in a July 6 story in the *Wall Street Journal* on the reluctance of newspapers to name advertisers in embarrassing contexts.)

Laurel: To the *National Observer* for its firm but courteous rebuke to J. Edgar Hoover in its issue of July 5, 1971. The *Observer* had received two intemperate and inaccurate letters over the FBI director's signature complaining about a profile the paper had run of Hoover. The *Observer* printed the letters, its editors' replies, and the original article, with added documentation.

Greetings

Welcome to two new journalism reviews:

The *Review of Southern California Journalism*, published by Sigma Delta Chi at California State College at Long Beach. [Quarterly; \$2.50 a year; address 6101 East Seventh Street, Long Beach, Calif. 90804.]

Thorn: *Connecticut Valley Media Review*, published by journalists in the Springfield, Mass., area, including one who was dismissed from the *Springfield Daily News*. [No announced frequency; \$5 a year; Box 1040, Holyoke, Mass. 01040.]

The First Amendment on trial

Two weeks that shook the press

A momentous press-government confrontation occurred in June. In a special section beginning on this page, the event and its implications are analyzed.

JULES WITCOVER

■ For most of the American people, the story of the Pentagon Papers began on Sunday, June 13, when copies of the *New York Times* appeared on doorsteps and newsstands bearing an unsensational two-line, three-column headline that read: VIETNAM ARCHIVE: PENTAGON STUDY TRACES 3 DECADES OF GROWING U.S. INVOLVEMENT. To the left was a particularly handsome picture of President Richard M. Nixon, his smiling daughter Tricia on his arm, at her Saturday afternoon White House wedding. The chances are that most readers saw that before they noticed the story that was to trigger one of the major government-press confrontations in American history.

Nineteen months earlier, however, readers of the *Times* had been told of the existence of the papers. In an article about former Secretary of Defense Robert S. McNamara in the *New York Times Magazine* of Nov. 9, 1969, Henry Brandon of the *Sunday Times* of London had written:

McNamara is reluctant to comment on what he believes were his lasting accomplishments in the Department of Defense, but not as reluctant as he is to discuss his role in the Vietnam war. Even with the documents at his disposal, he says, he would

not trust himself to write a history of those years. Instead, long before leaving the Pentagon, he ordered detailed historical records to be assembled, and there are now thirty to forty volumes that will be the raw material for a definitive history of that war.

And on Oct. 25, 1970, in the popular *Personality Parade* column in *Parade* magazine by "Walter Scott," who is Lloyd Shearer, *Parade's* editor on the West Coast, there was this exchange:

Q. There is a belief in this community that most quietly President Nixon has ordered a top-secret, exhaustive report on the U.S. involvement in Vietnam dating from World War II. Is there in fact such a report in the works? If so, will it be made available to the public so that we may finally learn the truth about the origin of the war? B. T. Clancy, Washington, D.C.

A. President Nixon has ordered no such report. Robert McNamara, Defense Secretary under Presidents Kennedy and Johnson, did, however. Several months before Lyndon Johnson oozed him out of the Pentagon, McNamara assigned a task force under Les Gelb to undertake the most thorough, in-depth study of U.S.-Vietnamese relations. The report was finished when McNamara was already out of the government. It runs to thirty volumes, is approximately 10,000 pages. There are relatively few copies in existence. There are no plans to make it public.

Daniel Ellsberg, one of the men who worked on the study, since then has said that he was the

Jules Witcover, of the *Los Angeles Times*, writes regularly from Washington for the *Review*.

**MITCHELL SEEKS TO HALT SERIES
ON VIETNAM BUT TIMES REFUSES**

—New York Times, June 15.

source of the material first published in the New York Times. He has not said when or how he supplied the documents, and the Times has said only that it obtained 7,000 pages through the investigative reporting of Neil Sheehan, a Washington reporter formerly assigned to coverage of the war in Vietnam. Sheehan obtained the papers sometime in March and informed his superiors. From the start, according to *Times Talk*, the paper's internal newsletter, their handling was a matter of utmost secrecy; Times employees were informed on the same strict need-to-know principle that guides internal disclosure of highly classified material within the Pentagon itself. Managing editor A. M. Rosenthal assigned foreign editor James L. Greenfield to direct the project, and Gerald Gold, an assistant foreign editor in New York, was told at the end of March he was to work with Sheehan.

Eventually, about seventy-five Times employees were brought into the effort and they successfully maintained the secrecy, going to remarkable pains to do so. On May 20, three weeks before publication, Nat Hentoff wrote in the *Village Voice* that the Times was working on a "breakthrough unpublished story concerning the White House, Pentagon, and Southeast Asia," and, alluding to an internal debate, he asked: "Is this story going to be published?" Still, most members of the Times staff learned about the story when they read it in the paper.

Work on the project started in Washington, then shifted to New York when manpower and logistics problems dictated the move. Gold checked into two rooms at the Jefferson Hotel in Washington, a few blocks from the Washington Post, on April 5, and for two weeks worked there with Sheehan, who had been examining and assessing the material with Max Frankel, the Times' Washington bureau chief. Sheehan and Gold gauged the scope of the task and assembled a library of books and magazines to help them sort out what

**JUDGE, AT REQUEST OF U.S., HALTS
TIMES VIETNAM SERIES FOUR DAYS
PENDING HEARING ON INJUNCTION**

—New York Times, June 16.

had and had not been published about the American involvement in Vietnam. They conveyed their assessment to Rosenthal, who in turn took it to publisher Arthur Ochs Sulzberger and got approval. There has been speculation since then that Sulzberger balked at publication and was persuaded by his editors, but this is denied.

Sheehan and Gold were brought to New York, to a three-room suite in the New York Hilton equipped with typewriters, filing cabinets, and two safes for the documents. Another assistant foreign editor, Al Siegal, and Muriel Stokes, a newsroom secretary, were added to the team—the first of a stream of staff members siphoned from regular duties and inserted unobtrusively into the operation. Hedrick Smith of the Washington Bureau, taking Russian lessons in preparation for a Moscow assignment, pitched in, and E. W. Kenworthy, also of the Washington bureau, was sent to New York. When colleagues asked Robert Phelps, the bureau's news editor, where they had gone, they were told: "Don't ask." Sheehan, Smith, and Kenworthy were the writers, with assistance from Fox Butterfield, who was on the New Jersey beat after having reported from both North and South Vietnam. Butterfield had to go back to Newark at one point to appear before a grand jury investigating a mugging he had suffered. All these staff members were told to stay away from the Times' main office. Greenfield shuttled back and forth, overseeing the project.

Eventually, the Times team had nine rooms on two floors of the Hilton. On the few occasions when all members of the team were out—for dinner or a meeting at Greenfield's apartment—guards from the Times stood watch. Members of the staff worked twelve to fifteen hours a day on the project. As the project neared completion, a makeup man went to the Hilton to lay out pages.

Meanwhile, in late May key production men were told about the effort and were instructed to

plan a secret, separate composing room in miniature to handle the special copy. A recently vacated office was found on the ninth floor of the *Times'* 43rd Street building and on June 9 was stripped and renovated to accommodate heavy equipment. Additional power and light fixtures were installed. In the composing room, a page proof press was dismantled, moved to the special room and reassembled, all in eight hours. The next day, six teletypesetter perforators, a galley proof press, a printer's saw, page storage cabinet, makeup tables, proofreader's desk, and even a

U.S. ASKING COURT FOR ORDER TO SEE TIMES DOCUMENTS

—New York *Times*, June 17.

paper shredder to destroy extra proofs were installed. A plant patrolman was posted outside the door and given a list of those to be admitted.

On Thursday night, June 10, the first segment of the finished copy was brought from the Hilton and the first tapes were punched. The tapes then were taken to a corner of the main composing room, run through Linotypes, and type and tapes were brought back to the ninth floor, where proofs were taken and pages made up. On Friday morning, Sulzberger, who had been reading the material, gave final approval. Fifty to sixty printers in teams—also pledged to secrecy—moved in and out of the special composing room, around the clock, while the staff back at the Hilton continued to write, check, and polish copy.

At 1:30 p.m. on Saturday, June 12, associate news editor Lawrence G. Hauck laid out page 1 of the Sunday paper, slugging the section at the top **NEIL**. Only ten copies were Xeroxed for the makeup editors and news desks that really needed them. In midafternoon, six complete pages that had been made up on the ninth floor were rolled to the main composing room for final corrections. The page 1 copy was made up in a type galley upstairs and dropped into the page as one unit; the

page was locked up and sent to the presses amid a mood of exultation. One of the great journalistic coups had been achieved, with hardly a whisper of suspicion anywhere.

In Washington, where the story probably had its greatest impact, reporter Don Oberdorfer of the *Washington Post* had heard some rumblings during the final week before publication, and on Thursday, Philip Geyelin, editor of the editorial page at the *Post*, heard that the project had something to do with Indochina, and that its publication would materially affect U.S. policy on Vietnam, possibly speeding American withdrawal. Ben Bagdikian, assistant managing editor for national news, heard Friday or Saturday that there had been a Rand Corporation study on the advisability of withdrawal from Vietnam, that all but one copy had been destroyed, and that copy may have fallen into the hands of the New York *Times*. Bagdikian called Henry Rowen at Rand and was told there had been no such study.

On Saturday night, Bagdikian was on the alert for the *Times'* story. Through an arrangement with UPI photos in New York, each night as page 1 of the *Times* comes off the press it is photostated and transmitted to the *Post*; the *Times* has

U.S. Fails to Get Immediate Court Order To Force Times to Turn Over Documents

—New York *Times*, June 18.

the same arrangement for page 1 of the *Post*. At about 11:30 o'clock Saturday night, Bagdikian called his national desk, was read the *Times'* page 1 copy, and realized at once its importance. He phoned for staff reporters experienced on the Vietnam story—veteran diplomatic reporters Chalmers Roberts and Murrey Marder, Pentagon reporter Michael Getler and Oberdorfer, who had covered the war in Vietnam—and asked them to report to work on Sunday.

On Sunday afternoon, the group conferred with Benjamin Bradlee, the paper's executive editor, and Howard Simons, deputy managing editor, about what to do. Some thought was given to sending Roberts and Marder to New York to

**THE TIMES SERIES STILL HELD UP
PENDING COURT RULING TODAY;
WASHINGTON POST RESTRAINED**

—New York Times, June 19.

skim the paper as it came off the presses and do a quick rewrite job, but the notion was quickly dismissed. The story was too important and complicated; it required the most careful analysis, checking, and rewriting. The editors decided to accept a one-day beating on the story by the *Times* in favor of doing a careful description of what the *Times* printed each day, feeding in documentation from the *Times* and other sources to give the reader an intelligible package.

Meanwhile, the *Post*—and the rest of American journalism—started scrambling, either to try to get the Pentagon Papers—a dim prospect, it seemed, at that juncture—or to spin off enterprise and reaction stories based on what the *Times* was printing in New York. For most Washington bureaus, it was a period first of shock and then of frustration, until events and enterprise finally spread the story among a number of papers.

The first development in that direction, ironically, came Sunday morning when U.S. Attorney General John N. Mitchell reached outside his Watergate apartment and picked up his delivered copy of the *Times* at his doorstep. He had received no advance warning, and it is probable that the first thing that hit his eye was the picture of President Nixon and Tricia, whose wedding Mitchell and his wife Martha had attended the previous afternoon. Mitchell had gone from there to a black-tie dinner for the Japanese ambassador Saturday night, and had gone to bed blissfully unaware that American journalistic tradition and the First Amendment were about to come crashing down on him.

Mitchell's Sunday morning reading was interrupted by a call from Secretary of Defense Melvin R. Laird, who was about to appear on CBS' *Face the Nation*. He was certain to be asked about the *Times*' disclosures. What should he say? Tell them the matter has been referred to the Justice

**COURT DENIES U.S. AN INJUNCTION
TO BLOCK TIMES VIETNAM SERIES;
APPEALS JUDGE CONTINUES STAY**

—New York Times, June 20.

Department, Mitchell growled. Laird went on the panel show with two CBS reporters and one from the New York *Times* but, incredibly, through thirty minutes and twenty-seven questions there was not a single inquiry about or reference to the Pentagon Papers story.

Mitchell, for all his concern, did nothing on Sunday. On Sunday night the *Times* published its second installment. On Monday morning Mitchell and two assistant attorneys general, Robert C. Mardian (for internal security) and William H. Rehnquist (legal counsel), began conferring. Laird called again, to ask what he should tell the Senate Foreign Relations Committee; again he was told to say that the matter had been referred to Justice, and Mitchell asked Laird for a Pentagon memorandum indicating the national security implications of publication. About 7 p.m. Monday, Mardian met Mitchell at Mitchell's Watergate apartment and they agreed on the text of a telegram to Sulzberger asking the *Times* to desist. It was decided to phone him as well.

Mardian placed the call and was told Sulzberger was in London; he talked instead to Harding F. Bancroft, executive vice president. The papers, Mardian said, reading the telegram, contained "information relating to the national defense of the United States" bearing top-secret classification whose publication was "directly prohibited" by the Espionage Law. If the paper did not desist, he told Bancroft, Mitchell would seek an injunction. The *Times*' answer came in a statement read to Mardian two hours later and printed in the *Times* of Tuesday, June 15, along with the third installment. "The *Times* must respectfully decline the request of the Attorney General," it said, "believing that it is in the interest of the people of this country to be informed of the material contained in this series of articles." Later Tuesday, the *Times* was enjoined from further publication,

pending a hearing on the Government's plea.

At the *Washington Post*, the paper's Vietnam experts still were rewriting, and scrambling to get a piece of the action on their own. On Tuesday, according to Bagdikian, the *Post* obtained "a little sliver" of the Pentagon study, but careful examination showed that the period it covered already had been broadly reported in the *Times*' Tuesday piece. The material was assessed as not unique enough to warrant *Post* publication. The *Post*'s editors anticipated that the Government's action against the *Times* would be thrown out in short

COURT RESTRAINS THE TIMES AGAIN; A HEARING TODAY

—New York Times, June 22.

order and that the *Times* would resume publication on Wednesday. Instead, U.S. District Court Judge Murray I. Gurfein granted a temporary restraining order for four days, until Saturday, June 19, at 1 p.m. Suddenly the *Times* was faced with prior restraint of publication; the scramble among the competition was bound to intensify now—and, as it turned out, segments of the Pentagon Papers soon were to become available to other newspapers. That night, Wednesday, June 16, on a New York radio show, former New York *Times* reporter Sidney Zion identified Ellsberg as the source of the *Times*' stories, and the FBI was on Ellsberg's trail.

On Thursday morning, June 17, Bagdikian arrived in a cab at Bradlee's Georgetown home, 4,400 unbound pages of the documents in hand. Bradlee, Roberts, Marder, and Oberdorfer were there; the five men went into the library and started sorting out what they had according to time periods and subject matter. Later that morning, Geyelin joined them, and two secretaries were brought in to compile a table of contents. Decisions were made as to what material was most important, and what material had not been covered in the *Times*' first three installments. Reporters

took segments about which they were most knowledgeable and started writing.

Simultaneously, in the living room, a twelve-hour discussion began about whether the stories ought to be published at all. Involved were Bradlee, Bagdikian, and two of the *Post*'s lawyers, Roger A. Clark and Anthony Essaye. As the reporters labored at the raw material, not knowing that there was some question that the *Post* would publish, the debate proceeded, joined through the afternoon by Simons, Geyelin, and his deputy, Meg Greenfield, and later by Frederick S. Beebe, chairman of the board of the *Post*. Bagdikian moved between the library and the living room, overseeing the flow of copy and entering into the discussion. About 7 p.m., the writers joined the living room group for a break and a drink.

Basically, according to Bagdikian, it was the lawyers and management on one side, wary about publication, and the editors and writers on the other, zealous to print. The lawyers posed the question of legal tactics and propriety—whether it might be wiser to establish the right to publish by allowing the New York *Times* case to run its course, avoiding indication of any contempt for the court in that case; the editors and writers saw it strictly in terms of freedom of the press and journalistic responsibility to the public—if it is authentic and significant, publish it. The discussion

Times Case Heard, Restraint Extended; U.S. Action Halts a Boston Globe Series

—New York Times, June 23.

continued through the *Post*'s small first edition run, finally ending about 9:30 p.m., in time for the main run. The decision was to publish.

A copy editor had been sent to Bradlee's house and had edited most of the first story by Roberts, and the copy had been sent to the paper in takes. Bagdikian grabbed the final three takes and took them himself by cab to the composing room. Publication seemed assured, when a call came for Bagdikian to return to Bradlee's. There the lawyers

***TIMES SERIES IS DELAYED AGAIN;
PAPER TO APPEAL TO HIGH COURT;
PANEL BACKS WASHINGTON POST***

—New York Times, June 24.

were posing a new objection. Maybe the *Post* should refrain from publication to avoid any appearance of collusion with the *Times*—which there had not been. The debate shifted to the kitchen. Calls were made to Mrs. Katharine Graham, the *Post*'s publisher. Finally, facing a 12:30 a.m. deadline, with the story set in type, the group again reached a decision to print, and the *Post* ran its first story on Friday, June 18.

All Thursday, the *Times* had been preparing its defense. The Justice Department had asked Judge Gurfein to order the *Times* to turn over the documents. While he urged the *Times* to do so, he did not so order. The paper refused to give up the papers but did supply a list of what it had. At the *Times*, its lawyers were busy educating its newsmen about the legal implications; the newsmen were educating the lawyers in the realities of how classified information, as a matter of course, is used and abused by government and press in Washington. Max Frankel now was in New York aiding in preparation of the defense, and he started to write a memo to the lawyers on how use of classification had become a self-serving government tool. It turned out to be a ninety-page affidavit, including seventy-two pages of exhibits [see page 22].

On Friday, June 18, while Government witnesses in New York charged that the *Times*' publication had damaged national security and while Judge Gurfein examined the documents, the *Post* also heard from the Justice Department. Around noon, Rehnquist called Bradlee and "respectfully requested" that the paper halt publication of the study-based stories. Bradlee "respectfully declined." A telegram ensued from Mitchell to Mrs. Graham; Justice then went into the federal district court in Washington seeking a temporary restraining order. Judge Gerhard Gesell in early evening refused to grant it, and the *Post* proceeded with

***TIMES ASKS SUPREME COURT TO END
RESTRAINTS ON ITS VIETNAM SERIES;
U.S. LOSES IN MOVE TO CURB POST***

—New York Times, June 25.

its second installment, by Marder. But the Government appealed, and two judges ordered Gesell to take a longer look at the case and decide by 5 p.m. on Monday. The *Post* stopped its presses, pulled off the plates containing Marder's story, and was ready to install substitute plates that had been prepared omitting the story. Just then one of the *Post*'s lawyers called; he had gone to one of the appellate judges, who said the order permitted the *Post* to complete its Monday night run. The original plates were rushed back onto the press and the full run was completed, with a delay of only about thirty minutes.

On Saturday, June 19, Gurfein ruled for the *Times*, but U.S. Circuit Court of Appeals Judge Irving R. Kaufman quickly extended the restraining order until the next Monday to enable a three-judge panel to hear the case. It was becoming clear now that a historic legal confrontation was under way that doubtless would reach the Supreme Court. *Post* editors and reporters, meanwhile, prepared affidavits of their own like Frankel's. Bradlee wrote that "President John F. Kennedy once read to me portions of a highly classified memorandum of conversation between him and Nikita Khrushchev in Vienna in 1961. I received his permission to use this material, which is still highly classified, and it appeared in *Newsweek*," where Bradlee then worked. Marder's affidavit included a story on the American intervention in the Dominican Republic in 1965 that was based "in considerable part on government cables which then were highly classified and still as far as I know remain classified," made available to him by Johnson Administration officials.

On Monday, June 21, the restraining order against the *Times* was extended another day to permit a full eight-judge panel to consider the case, and in Washington Gesell again backed the *Post* but the U.S. Court of Appeals extended the

restraining order another day to allow the full nine-man appellate court to consider it.

Meanwhile, in Boston, a segment of the Pentagon Papers had come into the hands of the *Boston Globe*, and a select group of staff members were gathered in a locked room with the papers. About 5 p.m., under the direction of John Driscoll, assistant to editor Thomas Winship, they began a crash study of the papers. Matthew V. Storin, the paper's metropolitan editor—recently returned from the Washington bureau and a tour in Vietnam—checked the published *Times* and *Post* presentations to identify material that was new, and stories were suggested to and approved by Winship and Crocker Snow, Jr., the assistant managing editor. Storin was assigned the lead story, executive editor Robert Healy wrote a piece on President Kennedy's approval of covert action in North Vietnam, and Darius S. Jhabvala, the State Department reporter, wrote two stories on diplomatic and CIA involvements.

Another eventual member of the writing team, Washington bureau chief Martin F. Nolan, was not in Boston. He had a prior speaking engagement at the American University in Washington

**SUPREME COURT AGREES TO RULE
ON PRINTING OF VIETNAM SERIES;
ARGUMENTS TO BE HEARD TODAY**

—New York Times, June 26.

and kept it to avoid any hint that the *Globe* was about to publish stories on the Pentagon study. At one point a student asked Nolan: "Is competition among newspapers as much of an influence as it was always said to be?" Nolan replied that he knew and liked Neil Sheehan, "but I would have broken both his legs to get the story first." Then Nolan took a late-night plane to Boston. Aboard was Stuart Loory of the Washington bureau of the *Los Angeles Times*, who had returned from vacation to join the pursuit. "I look at Loory," Nolan said later, "and Loory looks at me, and we both know we're up to something." Nolan on arrival went directly to the *Globe*, started reading, and wrote a story for the final reprint edition.

About three hours later, at 5 a.m. Tuesday, the phone rang in the *Globe* city room. Joseph Di-
neen, managing editor of the *Evening Globe*, took the call. It was Mardian asking whether the *Globe* would voluntarily cease publication—and griping about having been roused out of bed by news of the *Globe*'s stories. *Globe* editors, after conferences, called back and said that it planned to publish more. At 10.20 a.m., the phone rang in Winship's office. This time it was Mitchell himself. "Yes sir, General, Tom Winship here," the young editor said jovially. "Well," Mitchell said, "I see you're in the act." He "respectfully requested" that the *Globe* desist; Winship "respectfully declined." All right, Mitchell said, the Government would have to move against the *Globe*; otherwise the *Times* and *Post* would feel discriminated against.

In this instance, not only was the paper enjoined from further publication of its own stories based on the papers; it also was ordered to have the documents and stories impounded at the federal courthouse and was prohibited from printing stories from other newspapers or wire services based on the secret documents. The *Globe*'s lawyers swiftly appealed the rulings and won permission to store the papers and unpublished stories in a commercial bank vault, thus retaining possession. Also, after a day, the prohibition against using other stories based on the papers was lifted. Meanwhile, the bans on the *Times* and *Post* continued, amid more legal maneuvering.

The next paper to, in Mitchell's words, "get into the act" was the *Chicago Sun-Times*. About 5 p.m. Tuesday, the day Mitchell had called Winship, the *Sun-Times*' first edition had a story based, according to editor James F. Hoge, on declassified documents and "access to sources who had the papers." It concerned a contingency memorandum by then Assistant Secretary of State Roger Hilsman on the prospects for the overthrow of President Diem in 1963; the declassified memo had been dealt with much earlier in a *New York Times Magazine* article by former Johnson adviser John Roche, and was being offered around Washington by the Vietnam Veterans Against the War. At 1:30 a.m. Wednesday, June 23, a call came to Hoge from the U.S. Attorney's office in Chicago inquiring what the paper had and what

SUPREME COURT, 6-3, UPHOLDS NEWSPAPERS ON PUBLICATION OF THE PENTAGON REPORT; TIMES RESUMES ITS SERIES, HALTED 15 DAYS

—New York Times, July 1.

it intended to print in the future. Hoge was not there but other editors reported the paper would print what was "relevant and responsible," without indicating whether it had any secret papers. Presumably for this reason, and because the paper ran no documents as such, no Justice action followed, though the paper subsequently did run stories based on the Pentagon study.

That night, as a grand jury in Los Angeles was looking into the matter of the leaked papers, two more news organizations—the Knight newspapers' and the Los Angeles Times' Washington bureaus—were preparing stories based on parts of the study. In each case, the same procedure was followed: careful examination of the material by teams of newsmen to determine what was significant and had not yet been published elsewhere. Knight released its story with a statement that the papers at that time did not plan further stories. No one at Justice ever called, though the Knight papers later did obtain more secret papers and did publish again. Mardian tried to call Los Angeles Times executives Wednesday night but was unsuccessful. On Thursday, June 24, however, the U.S. Attorney in Los Angeles, Robert Meyer, called the paper's executive editor, William F. Thomas, and was told that the Times had no present intention of publishing more. Subsequently, the Los Angeles Times, too, obtained more of the papers and ran another story. Neither Knight nor the Los Angeles Times was enjoined.

Throughout all this, both the New York Times and Post cases continued to occupy the courts; the appellate court in New York voted 5 to 3 to send the Times case back to Gurfein; the appellate court in Washington voted 7 to 2 for the Post, but retained the restraining order to permit the Government to take a further appeal. The Times asked the Supreme Court to rule in its case, and the Government appealed the Post case there. On

Friday, June 25, the cases were consolidated and the Supreme Court voted 5 to 4 to continue the ban and hear evidence. At this juncture, primarily at issue was certain material the Justice Department had listed as damaging to national security. Under the rulings, both papers now were free to publish material not listed, but both declined, partly on principle, partly out of practicality.

In one of the great absurdities of the whole affair, Bradlee was not permitted to see the list of unpublishable items because he did not have security clearance, yet he was supposed to be free to publish what was not on the list he couldn't see! Lawyers who had seen the list would look at prepared copy, Bradlee said later, and one would say to the other: "I'm a little concerned about this." "Why?" Bradlee would ask. "I can't tell you," one of the lawyers would say. And then he would consult with his lawyer colleague.

Because the lawyers were the ones who were in conference and negotiation, and because they were approaching the case primarily from the legalistic rather than the journalistic point of view, Bagdikian said later, "we constantly were worried they might give something away. We had to educate them." George Wilson, the paper's military writer, who was considered to know the material best, was given security clearance to work with the lawyers.

As the Supreme Court prepared to hear the combined case, still another newspaper published stories and documents from the Pentagon study—the St. Louis Post-Dispatch, in its afternoon editions of Friday, June 25. About 9:30 p.m., assistant managing editor David Lipman received a call from U.S. Attorney Dan Bartlett in St. Louis, asking whether the paper planned further stories. If it did, Bartlett told Lipman, or if the paper wouldn't say, the Government was going to seek a restraining order. The paper was going to print

more, Lipman said, but not until Sunday; the Saturday paper was thin with small circulation.

Overnight, however, wire stories from Washington quoted the Justice Department as saying the *Post-Dispatch* was desisting pending the outcome of the Supreme Court decision in the *Times* and *Post* cases, then possibly due on Saturday. *Post-Dispatch* officials, learning of this erroneous version, called Bartlett and told him the paper's position had been misrepresented, that it appeared the *Post-Dispatch* was bowing to pressure. Hence, to protect its reputation for independence, the paper had decided to print a study-based story on Saturday. Before it could get another story in print, the *Post-Dispatch* was enjoined.

On Saturday, the Supreme Court heard arguments and then went into seclusion to vote and write opinions. On Monday, June 28, it extended its term, which was to have ended that day, and the final, most tense wait began. A brief and minor diversion came Tuesday morning, June 29, when the *Christian Science Monitor* printed the first of three articles based on the secret study. Shortly before noon, Erwin D. Canham, the paper's editor-in-chief, got a call from Herbert F. Travers, Jr., the U.S. Attorney in Boston. Travers said he was under orders to ask the *Monitor* not to publish further articles based on the study. Travers was told the paper would not voluntarily desist. Then he asked what the future stories would include, and Canham told him in a very broad way the subject matter. "I was in no sense submitting this or seeking clearance," he said later. "There was no question of clearance. It was the last thing I would have done." But the Justice Department issued a statement saying the *Monitor's* editors "had cooperated by disclosing to (Travers) the contents of the two remaining installments they propose to publish" and hence there would be no effort to enjoin the paper.

Shortly before the Supreme Court ruling one

other paper, *Newsday*, published a story based on the Pentagon study, together with a cloak-and-dagger account of how a reporter had been contacted and led through a treasure-hunt scenario to get the papers, in a shopping bag, in Boston.

Moments after 2 p.m. on Wednesday, June 30, the historic ruling of the Supreme Court finally came. The 6 to 3 verdict in favor of the *Times* and *Post* was flashed to jubilant newsrooms by reporters at the court. Cheers erupted in the *Times* newsroom when a news assistant rushed in from the wire room with a bulletin shouting, "We won!" Nowhere were the cheers louder and lustier than near the foreign news desk where Gerald Gold, who had played the central editing role from the start, sat in anticipation. Sulzberger and Rosenthal hugged each other; at a press conference, Sulzberger expressed "complete joy and delight," and Rosenthal called it "a joyous day for the press and for American society."

At the *Post*, managing editor Eugene Patterson was in the wire room; Mary Lou Beatty, deputy national editor, was holding a line to the court reporter; and Bradlee was holding a line to the lawyers. Miss Beatty was the first to yell: "The decision is out! It looks as though we've won!" Patterson came out of the wire room and jumped on a desk. "We win, 6 to 3!" he shouted, amid general jubilation. "This whole organization was electrified," Bagdikian said later. "Even in the composing room they cheered."

In Boston, when the verdict came John Driscoll was sitting in the vault of the First National Bank of Boston, babysitting the documents and copy. Forty minutes after the Court ruled, with the *Boston Globe's* afternoon deadlines slipping away, the *Globe* obtained a lower court order vacating the impounding of the papers and the temporary restraining order. Driscoll carried the whole batch back to the *Globe*. The stories were in the next edition.

Which paper do you read?

Given To All GIs Leaving Vietnam

Heroin Test Effective

—Sioux Falls, S.D., *Argus-Leader*, June 25.

GIs Discover Ways to Beat Heroin Test

—Milwaukee *Journal*, June 25.

The First Amendment on trial

Why we published

On being enjoined by the Government: by the managing editor of the New York 'Times'; the executive editor of the Washington 'Post'; the editor of the Boston 'Globe.'



A. M. ROSENTHAL

How did the *Times* reach the decision to publish the Pentagon Papers?

There were several key decisions. One was the decision to publish. Then, how to publish and what to publish. The decisions were not taken lightly. We had long discussions among editors and reporters about how we would present the material. A key decision was that we were going to tell the Pentagon story of the study. Our story was the Pentagon study—and the supporting documents—not the New York *Times* story of the war as pieced together from these sources plus others. We were going to lay out what the study said about the war and the conduct of the war and the decisions made, and provide the necessary documentation.

That sounds simple. Actually it was far more intricate than doing it the way some other papers

did. They didn't have the time, true, to take a different approach. The great intellectual achievement of reporters and editors who worked on the series was to stick to the Pentagon study, yet trace the developments, the trends, the historical movements, throughout this vast store of material.

The value of this study is that it provides an insight into the Government that the participants did not have. As I have said before, it is like a box labeled Thirty Years of American History. By printing, you open the box. You look down and you see people in various compartments—Truman, Eisenhower, Kennedy, Johnson—all moving and acting within their compartments. It is almost like a time warp, except that you can see more. While they are acting, they can't see behind them very clearly and they can't see ahead at all. One doesn't know how what he is doing will affect another. If you are the viewer, the reader, you can see the whole thing. You can see those acting and you can see the uses of power and the great imprisonment of power that you hadn't really realized; and how there is a kind of lockstep among administrations that they can't break out of because they don't know it exists.

The documents were an integral part of the study for several reasons. One is that the study without the documentation is only half a story or half a study, because the documentation forms part of it. Secondly, not to print the documentation when it was available would have been a great disservice to American society. All kinds of rumors and speculation would have built up: What is in these documents? About the atom

bomb? China? What great secrets? I think it would have been very divisive. People would have been debating this forever. What is in the documents? What are they afraid to reveal? It would have created ghosts in people's minds where none really need exist.

Another reason for documentation is that it was essential for the participants themselves—that is, the Joint Chiefs of Staff and others. They may not thank us now, but perhaps in time. Some of these documents were carefully reasoned. They represent the thinking of very earnest people at a very critical time in our history. To have summarized and excerpted from them or paraphrased would not have been fair to the people involved.

Why did you print serially instead of all in one issue?

I did not think it was proper to print it all at once. The material is difficult enough to digest over a period of ten days. There would have been no opportunity for anybody to comment on it while it was being published, and it would have been a kind of printing under the gun. I don't think you ought to print under the gun.

Was it considered that if you published serially the Government might step in?

We didn't know whether the Government would step in or not. But I don't believe in editing or publishing out of fear of what the Government might do. If we thought that the best way journalistically, for ourselves and for the reader, was to publish it serially, step by step as best we could, then that is the way we should have done it. That is exactly the way we did it. I don't believe in playing games with the Government, or with ourselves.

Did it trouble you that technically this material was classified?

Obviously, you don't just blithely not consider a thing like that. However, most of us have been around a long time in the newspaper business and have covered this kind of thing. We are quite

aware of classifications. We have all been involved in many stories where we were given classified material if it was information that would help the Government. We all know that very often a government classifies and declassifies not for military security reasons but for whim or political purpose. We all know that people who leave the Government write books in which they use classified information. Sometimes they get somebody to declassify it, sometimes not. We also know that none of this was current material; it concerned events only up to 1968.

It just seemed to us that this information was essential to understanding the course of the war and decision-making in the U.S. Government, and we had no right not to print it. How could we say to ourselves that we have this information, which we do not consider classified, not bearing on military security; it is a treasure house of, not secrets, but insights into the process of government; and then say, sorry, we'll keep it ourselves. That is not what the American press is all about.

What is your answer, then, to those who say, who is the *Times* to unilaterally declassify?

That is a question that I understand, but it is a simplistic question. For one thing the American press has a Constitutional status. It has a historical status. We made a decision that we felt was within our Constitutional rights. That is why we have a right to do it. We felt it was within our Constitutional rights and in the best interests of our country.

What is your response to the charge that you were publishing documents "stolen" from the Government?

We are dealing with decisions made in government that affect the people. Can you steal a decision that was made three years ago and that has caused consequences that a country now pays for, good or bad? How can you steal a decision like that? How can you steal the mental processes of elected officials or appointed officials?

As a reporter I was evicted from Poland. They

accused me of probing into the internal affairs of the Polish government. From their point of view I was stealing their information. I never thought that Americans would buy the argument that you can steal information on public matters. As a newspaperman you are in search of as much of the truth as you can arrive at. Your basic philosophy in life is that, taken altogether, the truth on important matters—or as much as you can arrive at—is good. That is your occupation in life; that is your belief: that what is harmful is lack of information.

Isn't this the root of the issue—which aspects are legal technicalities and which are central philosophical and legal questions?

I have been a reporter at the UN, and I learned very quickly that it was not sufficient to write a story saying this is what our government or the Soviet government or any other government has arrived at. What is important, if the objective is understanding, is as much information as possible. What were the alternatives? What was the discussion? Otherwise, how are people going to judge; how are they going to arrive at any conclusion about the end result. This is the very basis of American society. This is why we have Congress, this is why we have a press.

The First Amendment did not mean that we were free to print what the Government decided we would print; it meant quite the contrary. We were free to print what we felt was necessary for understanding. Not everybody is a newspaperman; not everybody has the same ideas of the First Amendment; not everybody in the newspaper business has the same ideas; not every lawyer has the same ideas. There are absolutists on the First Amendment; there are those who don't regard the First Amendment as overriding in every circumstance. It is a complicated matter.

This is what pleases me: that two important issues joined, that great Constitutional issues were raised—and they were raised on a worthy subject. This was no minor matter of our right to publish or another paper's right to publish some bit of scandal, although some of the same Constitutional provisions would apply. Here were

two issues worthy of each other. The story dealt with one of the most basic crises in American life and it raised fundamental Constitutional issues. It has made people think. The decision-making process, the interlocking relationship of one administration to another, the thought or lack of it in a decision—this is worth thinking about.

The Constitutional questions are worth thinking about, too. Most Americans would say they want a free press. Well, you have to get down to a definition of what is a free press and how free do you want it to be? And what does the Constitution mean?

Do you think that the news media are better off or worse off as a result of the Court's decision?

I think the press is far better off as a result of the Pentagon Papers case itself. The decision of the *Times* to print it, I think, had a kind of rejuvenating effect. A good part of the American newspaper business needed something like this.

As to the Supreme Court decision, given the whole history of the Court, I think we won and we lost. We won the key decision in court. The negative wasn't so much the Court decision, it was a combination of two things: the Government's willingness to go in and get an injunction—which no other administration to my knowledge has been willing to do—plus the various courts' willingness to hear cases of injunction and to grant a temporary injunction. Except, of course, for Judge Gesell in Washington. I don't think that's a step forward. But the degree of the loss depends not so much upon legalities, because the right to ask for an injunction was always there; it depends on the attitudes of the people who run the Government and of the public.

I don't think this necessarily is a loss, but it could be if there are administrations that want to try to take advantage of this and build up a continuing process. I rather doubt that they will do so. I don't think they looked too good in trying to enjoin the whole American press. All together, I think we came out ahead, and at a time like this it's not bad for the press to come out ahead.



BENJAMIN C. BRADLEE

When the opportunity to publish from the Pentagon Papers arose, what qualms, if any, did the *Post* have?

Our decision-making process was in two parallel channels. One, of course, involved the group that went after the documents themselves, culled them, decided what stories and what parts of stories to include. The second parallel segment was on the question of the law—the First Amendment, the various codes and statutes.

Before we were very far into the documents, editors and reporters discussed the point that we were dealing with information that could be genuinely sensitive. We just decided that it was in the nature of the responsibility of a major newspaper not to publish anything that would do irreparable harm to the security of the United States. I am not talking about embarrassment. I am not talking about catching public figures in deceit or lies. We were not going to publish any code information. We were not going to publish the names of undercover CIA agents, even though we presumed that any intelligent CIA man would have assumed those people were compromised and gotten them into another line of work. This was a judgment we made early; this was a judgment we stuck to.

The other part of the discussion of law con-

cerned the fact that the Government had moved to enjoin. The statute states that it applies to anyone who has reason to believe that publishing information would do irreparable harm. Unlike the New York *Times*, we did have reason to "believe" that. A case had been made; the Secretary of State had said it; the Attorney General had said it; and a judge in New York had enjoined a paper. But we felt that we were not under the jurisdiction of the New York Court, obviously. And that the principle we were fighting for was that we could not be restricted by the Government to running only that information that the Government said we could. That was the issue: Who was to decide what should or shouldn't be published?

Once the Government said we could not print, the issue was joined. Even when the Supreme Court lifted the total stay of the Court of Appeals and narrowed it to only the so-called special appendix in the New York case, plus any other supplementary material that they would file by 5 o'clock Friday, we felt that we shouldn't print anything, because to comb through what we had and take out what the Government specified, without proof, was unacceptable.

Do you have sources in the academic community or elsewhere to whom you went to check whether material was indeed sensitive?

Here was the most impressive thing you have ever seen. When Assistant Secretaries of State or Defense insisted, *in camera*, that publishing TOP SECRET documents would do irreparable harm—which is what they were trying to tell us—Chalmers Roberts and George Wilson could cite chapter and verse on where information had already been published: even page numbers of books. Chester Cooper's book, the Kraslow-Loory book, Robert McNamara's testimony—time and time again. We retained a cryptographic expert on the question of compromising of codes, in case that became an issue. The New York *Times* retained the same man, David Kahn, who wrote *The Codebreakers*.

I don't say that we are completely qualified to determine these matters, but we are better quali-

fied than people realize—and we are patently better qualified than the government witnesses. Fourteen of nineteen judges agreed. In fact, Deputy Undersecretary of State William Macomber said the other day that no newspaper had published anything which had endangered national security. That's what the fight is all about.

Because the Washington Post owns broadcast stations, do you consider yourself in double jeopardy, because of a question whether a convicted felon can hold a license?

I think a lot of the press coverage lost track of the size of the stack of chips that went out on the table. We own radio or TV stations in Washington, Miami, Jacksonville, and Cincinnati. You tell me the value of those licenses. This is apart from the fact that we were in the middle of a stock offering. I didn't know it at the time, and nobody told me—which is to their credit—that there is a clause in the underwriting that if there is a major change in circumstances—and an indictment by the federal government would certainly be a major change—the underwriter can get out of his agreement. People ask, Did you discuss all this with your lawyers? You can be sure we discussed it at length.

Do you think that the Court's decision left you in a better position or a weaker position vis-à-vis covering the Government?

I think we mustn't kid ourselves about how much of a landmark decision, what broad guidelines, what new law the Justices made. Their ruling was very narrow. In this case the Government did not meet its severe burden of proving that prior restraint was justified. Such a case probably won't arise again. Where are you going to get a case involving some forty volumes?

I would think that after the rulings of the circuit courts, as well as the Supreme Court, the Government will find it more difficult to attempt prior restraints. If they go after us on criminal grounds, if they get a conviction, I think it will scare all of us out of our assumptions. I don't think they are going to get a conviction.



THOMAS WINSHIP

Did the Globe have any qualms that publishing material from the Pentagon Papers might jeopardize national security?

Not really. We received only 1,700 of 7,000 pages and none of it appeared to even come close to jeopardizing security. In fact there were few surprises. For the most part the material confirmed what had been published in bits and pieces over the years.

Did you ever consider going to the Government and asking what to hold out?

No. If I had had any serious doubts in my own mind, or if I had exhausted the resources I have among ex-government people, I think I would have considered going to the Government for informational guidance. But this would have been very informal. The main concern was to satisfy ourselves that it was the perfectly safe thing to do. I think we have been bamboozled much more than we realize by overclassification.

What do you think publication of the Papers accomplished?

I get my best answer from an article that Stanley Hoffman wrote for the *Globe*. He is a

professor at Harvard, an old-line dove, a first-class historian. He said that he thought the greatest argument for running these papers is that it convinced him—and I think most other thoughtful persons—that you ought not to be involved in a war that you can't talk about. The yardstick for any kind of foreign venture ought to be that you can discuss it candidly with the public—if you believe in a democracy. All the little war games that these government people were playing, which now are coming out in different forms to the public, tell me that newspapers weren't talking candidly for too many years about Vietnam.

Another great gain from the Pentagon Papers is that we will see great advances in declassifying information. That is the basic stuff of democracy.

What is your reaction to the statement by the Chief Justice of the United States that he would have expected the press to take any secret documents to responsible public officials, just as a taxi driver might?

It is an extraordinary statement. But I thought

it was reassuring that his general philosophy was shared by only two other members of the Supreme Court. The statement was a shocker because the course record of the print media is quite good over the years. The closest thing we had to threatening the safety of the country in wartime came from the *Chicago Tribune*. I think it is remarkable that the press has had only one security-threat case in the past hundred years. That is what I call rather great voluntary prior restraint by a free institution.

Do you think in the long run the whole experience will be a healthy thing?

I think it will be healthy for the press. I think this vote of confidence from the Supreme Court has given us a little backbone. But I think it should make us a lot more humble, too. Most editors are not in the business of breaking secrets. They are not in the business of receiving stolen goods. They are not in the business of being imposters or threatening the national security. I for one am going to make sure that nobody thinks we are.



—Albuquerque, N.M.
Journal, June 21.

The First Amendment on trial

"The Government's complaint . . . comes with ill grace because government itself has regularly . . . violated the conditions it suddenly seeks to impose. . . ."

The 'state secrets' myth

MAX FRANKEL

■ The Government's unprecedented challenge to the *Times* in the case of the Pentagon Papers cannot be understood without an appreciation of the manner in which a small and specialized corps of reporters and a few hundred American officials regularly make use of so-called classified, secret, and top secret information and documentation. It is a cooperative, competitive, antagonistic, and arcane relationship. I have learned over the years that it mystifies even experienced professionals in many fields, including those with Government experience, and including the most astute politicians and attorneys.

Without the use of "secrets" there could be no adequate diplomatic, military, and political reporting of the kind our people take for granted, either abroad or in Washington, and there could be no mature system of communication between the Government and the people. That is one reason why the sudden complaint by one party to these regular dealings strikes us as monstrous and hypocritical—unless it is essentially perfunctory,

for the purpose of retaining some discipline over the federal bureaucracy.

I know how strange all this must sound. We have been taught, particularly in the past generation of spy scares and Cold War, to think of secrets as *secrets*—varying in their "sensitivity" but uniformly essential to the private conduct of diplomatic and military affairs and somehow detrimental to the national interest if prematurely disclosed. By the standards of official Washington—Government and press alike—this is an antiquated, quaint, and romantic view. For practically everything that our Government does, plans, thinks, hears, and contemplates in the realms of foreign policy is stamped and treated as secret—and then unraveled by that same Government, by the Congress, and by the press in one continuing round of professional and social contacts and cooperative and competitive exchanges of information.

The governmental, political, and personal interests of the participants are inseparable in this process. Presidents make "secret" decisions only to reveal them for the purposes of frightening an adversary nation, wooing a friendly electorate, protecting their reputations. The military services conduct "secret" research in weaponry only to reveal it for the purpose of enhancing their budgets, appearing superior or inferior to a foreign army,

Max Frankel is Washington bureau chief of the New York *Times*. His comments are adapted from an affidavit filed in the Pentagon Papers case. The complete file of *Times* legal briefs and supporting documents, edited by *Times* general counsel James C. Goodale, is available from Arno Press, Inc., at \$75 per set.

gaining the vote of a congressman or the favor of a contractor. The Navy uses secret information to run down the weaponry of the Air Force. The Army passes on secret information to prove its superiority to the Marine Corps. High officials of the Government reveal secrets in the search for support of their policies, or to help sabotage the plans and policies of rival departments. Middle-rank officials of government reveal secrets so as to attract the attention of their superiors or to lobby against the orders of those superiors. Though not the only vehicle for this traffic in secrets—the Congress is always eager to provide a forum—the press is probably the most important.

In the field of foreign affairs, only rarely does our Government give full public information to the press for the direct purpose of simply informing the people. For the most part, the press obtains significant information bearing on foreign policy only because it has managed to make itself a party to confidential materials, and of value in transmitting these materials from government to other branches and offices of government as well as to the public at large. This is why the press has been wisely and correctly called the Fourth Branch of Government.

I remember during my first month in Washington, in 1961, how President Kennedy tried to demonstrate his "toughness" toward the Communists after they built the Berlin wall by having relayed to me some direct quotations of his best arguments to Foreign Minister Gromyko. We were permitted to quote from this conversation and did so. Nevertheless, the record of the conversation was then, and remains today, a "secret."

I remember a year later, at the height of the Cuban missile crisis, a State Department official concluding that it would surely be in the country's interest to demonstrate the perfidy of the same Mr. Gromyko as he denied any knowledge of those missiles in another talk with the President; the official returned within the hour and let me take verbatim notes of the Kennedy-Gromyko transcript—providing only that I would not use direct quotations. We printed the conversation between the President and the Foreign Minister in the third person, even though the record probably remains a "secret."

I remember President Johnson standing beside me, waist-deep in his Texas swimming pool, recounting for more than an hour his conversation the day before, in 1967, with Prime Minister Kossygin of the Soviet Union at Glassboro, N.J., for my "background" information and subsequent though not immediate use in print, with a few special off-the-record sidelights that remain confidential.

I remember Secretary of State Dean Rusk telling me at my first private meeting with him in 1961 that Laos is not worth the life of a single Kansas farm boy and that the SEATO treaty, which he would later invoke so elaborately in defense of the intervention in Vietnam, was a useless instrument that should be retained only because it would cause too much diplomatic difficulty to abolish it. Similar dealings with high officials continue to this day.

We have printed stories of high officials of this Administration berating their colleagues and challenging even the President's judgment about Soviet activities in Cuba last year. We have printed official explanations of why American intelligence-gathering was delayed while the Russians moved missiles toward the Suez Canal last year.

Respect for sources and for many of the secrets prevents a truly detailed accounting. But I hope I have begun to convey the very loose and special way in which "classified" information and documentation is regularly employed by our government. Its purpose is not to amuse or flatter a reporter whom many may have come to trust, but variously to impress him with their stewardship of the country, to solicit specific publicity, to push out diplomatically useful information without official responsibility, and, occasionally, even to explain and illustrate a policy that can be publicly described in only the vaguest terms.

This is the coin of our business and of the officials with whom we regularly deal. In almost every case, it is secret information and much of the time, it is top secret. But the good reporter in Washington, in Saigon, or at the United Nations gains access to such information and such sources because they wish to use him for *loyal* purposes of government while he wishes to use *them* to learn what he can in the service of his readers. Learning

always to trust each other to some extent, and never to trust each other fully—for their purposes are often contradictory or downright antagonistic—the reporter and the official trespass regularly, customarily, easily, and unselfconsciously (even unconsciously) through what they both know to be official “secrets.” The reporter knows always to protect his sources and is expected to protect military secrets about troop movements and the like. He also learns to cross-check his information and to nurse it until an insight or story has turned ripe. The official knows, if he wishes to preserve this valuable channel and outlet, to protect his credibility and the deeper purpose that he is trying to serve.

The Government’s complaint against the *Times* in the present case comes with ill grace because government itself has regularly and consistently, over the decades, violated the conditions it suddenly seeks to impose upon us—in three distinct ways:

First, it is our regular partner in the informal but customary traffic in secret information, without even the pretense of legal or formal “declassification.” Presumably, many of the “secrets” I cited above remain “secret” in their official designation.

Second, the Government and its officials regularly and customarily engage in a kind of *ad hoc*, *de facto* “declassification” that normally has no bearing whatever on considerations of the national interest. To promote a political, personal, bureaucratic, or even commercial interest, incumbent officials and officials who return to civilian life are constantly revealing the secrets entrusted to them. They use them to barter with the Congress or the press, to curry favor with foreign governments and officials from whom they seek information in return. They use them freely, and with a startling record of impunity, in their memoirs and other writings.

Third, the Government and its officials regularly and routinely misuse and abuse the “classification” of information, either by imposing secrecy where none is justified or by retaining it long after the justification has become invalid, for simple reasons of political or bureaucratic convenience. To hide mistakes of judgment, to

protect reputations of individuals, to cover up the loss and waste of funds, almost everything in government is kept secret for a time and, in the foreign policy field, classified as SECRET and SENSITIVE beyond any rule of law or reason. Every minor official can testify to this fact.

Obviously, there is need for some secrecy in foreign and military affairs. Considerations of security and tactical flexibility require it, though



—Herblock, *Washington Post*.

usually for only brief periods. The Government seeks with secrets not only to protect against enemies but also to serve the friendship of allies. Virtually every mature reporter respects that necessity and protects secrets and confidences that plainly serve it.

But for the vast majority of “secrets,” there has developed between the Government and the press (and Congress) a rather simple rule of thumb: the Government hides what it can, pleading necessity as long as it can, and the press pries out what it can, pleading a need and right to know. Each side in this “game” regularly “wins” and “loses” a round or two. Each fights with the weapons at its command. When the Government loses a secret or two, it simply adjusts to a new reality. When the press loses a quest or two, it simply reports (or

misreports) as best it can. Or so it has been, until this moment.

Some of the best examples of the regular traffic I describe may be found in the Pentagon Papers that the Government asks us not to publish. The uses of top secret information by our government in deliberate leaks to the press for the purposes of influencing public opinion are recorded, cited, and commented upon in several places of the study. Also cited and analyzed are numerous examples of how the Government tried to control the release of such secret information so as to have it appear at a desired time, or in a desired publication, or in a deliberately loud or soft manner for maximum or minimum impact.

Examples of my point are so numerous that despite the great bulk of the papers, we were able to locate more than a dozen different kinds of such passages in less than an hour. They include not only regular, daily articles but also major contemporary analyses of government decision-making at several key stages of the Vietnam war, right after the Cuban missile crisis, and shortly after the invasion of Cambodia. They include major journalistic investigations of secret institutions, like the Central Intelligence Agency. They combine known facts, pried-out secrets, and deliberate disclosures of secrets. They are recognized within the profession and among readers as the most valuable kind of journalism and have *never* been shown to cause "irreparable" harm to the national security. They have occasionally prompted investigations inside the Government to determine the sources of information, the possible presence of disloyal or dissenting officials, or the existence of information not previously given any weight or credibility by higher authority. None of these articles could be fairly described as less "sensitive" or more innocuous than the materials now challenged. None of them ever produced a legal challenge or a request for new legislation.

Samples of the second kind of traffic in secrets—the *ad hoc*, *de facto* (but by no means authorized, official, or "legal") declassification of documents—are numerous and voluminous.

George Christian of Austin, Tex., former press secretary to President Johnson who had free admission to all foreign and domestic discussions

involving the President, at any level and in any forum, published his memoir in 1970. It includes seventy pages of narrative on the decisions to end the bombing of North Vietnam in late 1968, with many direct quotations of the President and other officials, many unflattering references to our allies in South Vietnam, and a great deal of detailed information, all still highly classified, about the secret negotiations with North Vietnam in Paris. This book, entitled *The President Steps Down*, actually covers a period more recent than that discussed in the Pentagon Papers, and at a much higher level of government and secrecy.

Recently, a book containing secret documents from members of the Joint Chiefs of Staff about the very same period covered by the *Times*' materials was published. The book, entitled *Roots of Involvement*, by Marvin Kalb and Elie Abel, includes telegram exchanges between General Westmoreland and General Wheeler in early 1968. We



"I DON'T KNOW—I JUST WENT IN THERE TO DELIVER SOME GUY'S LUNCH"

—Pierotti, New York Post.

are advised that these texts were taken from privately circulated analyses and histories of phases of the war by leading military commanders, still on active duty.

Theodore C. Sorensen's *Kennedy*, written within a year of the death of President Kennedy, reveals dozens upon dozens of actions, meetings, reports, and documents, all still treated

as "classified" by the Government and unavailable for more objective journalistic analysis. Sorensen treated the Kennedy-Khrushchev correspondence as private, to protect future channels of communication with Soviet leaders, but the most "secret" of these letters, during the Cuban missile crisis, were fully revealed in two subsequent books, one by Elie Abel and one by Robert F. Kennedy. Sorensen also observes that while Kennedy was still alive he invited Professor Richard Neustadt into Government archives for a contemporary analysis of decision-making of the "Skybolt" affair, the secrets of which were later revealed by the professor in a public account of this minor-missile crisis with Britain.

Arthur Schlesinger, Jr., kept notes in the White House for his history of the Kennedy years entitled *A Thousand Days*. Roger Hilsman, an intelligence officer and then Assistant Secretary of State for the Far East, poured his files and secrets into a quick memoir entitled *To Move a Nation*. John Bartlow Martin, special ambassador during the Dominican Republic invasion of 1965, wrote *Overtaken by Events*, recounting numerous confidential messages and communications. Chester Cooper, a CIA official involved in Vietnam policy for two decades, left the White House to produce what was probably the most complete and best-documented history until the Pentagon Papers became available to the *Times*. *The Secret Search for Peace in Vietnam*, by David Kraslow and Stuart Loory of the Los Angeles *Times*, remains to this day the most thorough newspaper (and book) account of the diplomacy surrounding the war—through channels still deemed "live."

As the *Times* indicated in the first of its articles about the Pentagon study, it is a massive history of how the United States went to war in Indo-

china. Its 3,000-page analysis, to which 4,000 pages of official documents are appended, was commissioned by Secretary of Defense Robert S. McNamara in 1967 and completed in 1968, by which time he had been replaced by Clark M. Clifford. The analysis covers a historical record, as the *Times* said, from World War II to May, 1968—the start of the peace talks in Paris, by which time President Johnson had set a limit on further military commitments and revealed his intention to retire. We said that "though far from a complete history, even at 2.5 million words, the study forms a great archive of government decision-making on Indochina over three decades."

Moreover, the material was treated by the *Times* as a historical record that was of importance not only to our daily readers but also to the community of scholars that we have long served with a record of events. Our presentation was subjected to the most careful editing so that our report would remain faithful to the Pentagon record itself.

The *Times* found the history to be concerned primarily with the decision-making process in Washington and the thoughts, motives, plans, debates, and calculations of the decision-makers. I have seen no materials bearing on future plans of a diplomatic or military nature. The *Times'* interest throughout, like that of the study itself, in the words of our opening line, was in "how the United States went to war in Indochina."

The Pentagon Papers published by the *Times* and a bureaucratic history and analysis of the interaction of events and policy decisions are an invaluable historical record of a momentous era in our history. We cannot believe they should be suppressed.

Which headline do you read?

—New York
Times, July 14
(emphasizing
six-month
figures).

**PROFITS SOAR 160%
AT MERRILL LYNCH**

—Wall Street
Journal, July 14
(emphasizing
quarterly
figures).

**Merrill Lynch
Indicates Profit
Plunged in June**

Where we stand: a Washington view

PHILIP L. GEYELIN, editor of the editorial page, Washington 'Post'
DAVID KRASLOW, Washington bureau chief, Los Angeles 'Times'
ALAN L. OTTEN, Washington bureau chief, 'Wall Street Journal'
WILLIAM SMALL, Washington bureau manager, CBS News
TOM WICKER, associate editor, New York 'Times'

In your opinion are the news media better off or worse off as a result of the Supreme Court's "Pentagon Papers" decision?

KRASLOW: I think it is a little early to say. I am a little nervous about all of the court cases coming up in various areas of freedom of the press and broadcasting—the question of obtaining a reporter's notes, and so forth. I think this is a reflection of the state of confrontation politics in our society. I think the news media have had a very healthy arrangement—a rather informal arrangement—up to this point, and I think we are running grave risks by pressing these questions to the point where we are inviting absolute definitions and limitations on the manner in which we may operate. What struck me in the Supreme Court opinions in the *New York Times* and *Washington Post* cases is the virtual invitation to Congress to write a statute spelling out when prior restraint may be invoked and when it may not. I think that's risky.

WICKER: I think marginally we are probably worse off than we were. But it would have been

worse if the Supreme Court had ordered the *Papers* to be published without giving any reason for it. Then the precedent would have been that the Government had stayed publication for a couple of weeks. As it is, we have come out with six Justices of the Court who said, in varying degrees, that there were circumstances in which the press could be restrained from publication. Prior to that, there had been only an almost offhand remark in *Near vs. Minnesota* that suggested there might possibly be such circumstances.

The saving grace is that it is very difficult to foresee circumstances in which prior restraint on publication becomes a practical weapon for the Government. There are not going to be many cases where we have material that would be published in serial form. I agree that it is one of those cases that probably would have been better if left in limbo.

GEYELIN: I don't see how we are better off, and I think we are worse off because we were in fact in "prior restrained" for up to two weeks while the case was in court. This happens to have involved a historical document, but it could easily have

been a situation like the Bay of Pigs where twenty-four hours could have mooted the question. Court procedures allowed the courts to restrain us for a considerable period. If it had been a hot breaking story, we would have lost it.

The *Post*, at any rate, was very lucky to get a judge who threw the case out the first time around, and said there was no way to do otherwise—he could hear it forever and not make an argument for restraint. The second time around, after being forced to hear the case in greater detail, the court came roughly to the same conclusion. If Judge Gesell's opinion is the law of the land, or can be construed to be, we are better off, because he just ruled out prior restraint.

One other point to consider is that another shoe can be dropped. We don't know yet what the Government will do about prosecutions on criminal grounds and what effect that can have. Judge Gesell's argument is that in the case of the *Post* we are in "serious jeopardy" on criminal grounds, and that is the only alternative the Government now has. We haven't seen the full power of the Government at work in this case, and we don't know what would happen if the very worst happened: if the *Washington Post* or the *Times* or both were brought to trial and convicted.

We know one thing that would happen, in the case of a newspaper that owns a TV station, and we know that this is somewhat on the minds of people in the Justice Department. My understanding is that nobody who has been convicted of a felony can own a TV station, as a practical fact; whether or not that is the law, it is an awfully good argument for anybody who wants to challenge your TV license. Some people think that politically it would be much better to indict a corporation than to send Arthur Ochs Sulzberger or Neil Sheehan or Chalmers Roberts or another member of a staff to jail. It is not the \$10,000 fine, which is not more than a fraction of our legal fees; if you are a convicted felon, you lose some rights of citizenship. That is something to consider in any adding-up.

WICKER: There are two other imponderables. Precisely because we haven't received the full treatment we don't know as yet what the ultimate

long-term reaction of the press will be. For instance, I know that prior to the publication by the *Times*, we had a lively debate and, among others, I was absolutely convinced that the Government would not move as it did and seek prior restraint. The next time my advice might be quite different. If there is a criminal prosecution—and particularly if it is a successful criminal prosecution—again my advice might be different. The mere fact that in this case, with a deeply divided majority, the Court held in the newspapers' favor doesn't necessarily mean that newspapers are going to be emboldened to act in the future.

This question interests me: Suppose the Government does bring a criminal prosecution and loses it. If that is the case, the Government's having failed at prior restraint—at least permanent prior restraint—and having failed at criminal action, I think an astute politician could make a considerable case to the country that something has got to be done. The failure of criminal prosecution might be the biggest impetus you could get toward an Official Secrets Act.

In the future I probably would still advise to publish, but I certainly would never again say, "Oh, they'll never do anything."

KRASLOW: One should probably advise to publish all at once and moot the question.

SMALL: It seems to me that a climate has developed in the last half a dozen years particularly, but probably over a decade, of building antagonism toward the press generally. We hear more and more people on the Hill say to us privately that their constituency would prefer that they go after the press rather than what has been the great tradition of defending the free press. Politicians, it seems to me, are beginning to feel that there is more hay to be made in appealing to people who don't like newspapers, who don't like TV; and this is very dangerous.

What was the public reaction in this case, as made known to your organizations?

WICKER: Every measure we have so far suggests that the general public stood with us. There are

a couple of things to say about that. One, the war in Vietnam and the Johnson Administration's part in it are so suspect by the American people anyway that I think they tended to welcome this publication where they might not welcome some other kind. The other thing is, there is a practical limit on this anti-press sentiment. As long as Vice President Agnew or someone else is making fairly broad-scale popular charges against the press, he will get substantial support, but when it comes to leading a reporter or a publisher off in shackles, I think that is going to be different. Therefore the ability of a politician to exploit the popular attitude toward the press is quite limited. In this case

"Running grave risks by pressing these questions . . ."

the Administration could have got a great deal more popular support if it had not moved to restrain publication, but through the full power of the Executive Branch had denounced these several newspapers for gravely endangering the national security, while at the same time taking a free-press position.

GEYELIN: I think they would have had trouble with that because, although the Government kept improving its case and trying to say what was objectionable, it was terribly inhibited by its inability to say it. If someone says it, he has blown the case. As one fellow at the Pentagon told me, to really define what it is in thirty of 7,000 pages that really bugs them—to really define what it was about the cryptology and communications interception, and so forth—gives away the case. You have to do it *in camera* to begin with. How do you make a national issue out of something that you can't discuss in public?

That plus the polls seeming to be somewhat in favor of publication—which has to do with attitudes about Vietnam—and the newspapers' reaction, was something that Congress would have to

take into account. Press reaction was almost unanimous. Prior restraint is something even the most conservative publisher can understand.

OTTEN: I want to get back to the point that we are now faced—whether in the courts or in the Congress or at the bar of public opinion—with a period where we are going to have to fight to defend rights and privileges that up to this point we have taken for granted. I think in that light we have been set back. Until now the view that prior restraint was not justified under any conditions has been unchallenged because the press' record of self-censorship and enlightened judgment of its own has been so responsible and so completely in the public interest. That was one of the weaknesses of the Administration case: They had a terrible problem finding instances where the press had endangered security. They couldn't.

SMALL: I think there are very few cases in history where you could say to a newspaper "Now, you've done it, you have jeopardized national security." The Chicago *Tribune's* indirectly revealing we had broken the Japanese code, for example; there are very few instances of that. And I would hope that there is very little tendency for self-censorship, because I think it is healthy that we have as few secrets as possible.

It seems to me that the burden of proof is on the Government. If officials want to keep a thing secret, they ought to do it always on the assumption that someday it is going to get out. I really don't care that the diplomats might have more trouble dealing with the Russians or the French or the Japanese; I'm more concerned about the people; ultimately they must make the decisions.

WICKER: I take Justice Black's absolutist position in my own nonlegal fashion; I believe in that thoroughly because I believe the record of the press justifies that position over the years, and the record of the Government absolutely negates any idea that it would administer some kind of an Official Secrets Act fairly and with due concern for the public interest. I don't believe the British government does that. Of course there are times when a responsible newspaper ought not to pub-

lish, but there is never a time when that is not the newspaper's decision to make. I have no confidence whatever that if the Government did have some legislative authority to impose prior restraint—an Official Secrets Act—it would not be used to the Government's own self-serving advantage.

KRASLOW: In this connection, it is interesting to recall a conversation I had on the day of the Supreme Court decision with Professor Paul Freund of Harvard, a Constitutional scholar of renown with strong views on the First Amendment. Professor Freund is generally sympathetic to the view that the rights of a free press in our society must be protected, but even he rejects the absolutist position and feels it would be preferable to have Congress enact a statute defining when prior restraint would be permissible. He told me that restrictions should be absolutely minimal, with prior restraint invoked only in cases where life and national security are clearly involved. When I asked Professor Freund if he would be willing to draft such a law, he said, "No, thank you. It would be a very tough thing to do." That is exactly my view of the prospect of coming up with a statute which can win wide acceptance.

Are there any here who do not have channels for obtaining an informal opinion about whether something is indeed so sensitive you shouldn't publish it?

WICKER: That raises an interesting point because in the past reporters who have come across what they knew was bound to be such a story have attempted in many ways to get it confirmed or backstopped. There is a question now of whether they will do that as wholeheartedly.

As an example, I think it is well known that during the Cuban missile crisis in 1962 the New York Times came across certain information and attempted to confirm it through a very high-ranking national security official, and the President of the United States then asked us not to publish it, and we did not. I suspect that the record of this past June shows that on precisely the same facts a newspaperman is likely to get an injunction slapped on him, rather than the Presi-

dent calling up and saying, "Will you please not publish this, in the national interest?" If that is a possibility then I raise a further question: Would we the next time be as conscientious about checking that information, or would we simply go ahead and publish, or—worse hypothesis—perhaps not publish it at all?

GEYELIN: You are right. Now I would like to ask, what would the *Times* have done if this Administration had not had the record of a campaign against the press, if President Nixon could have brought himself to call up the publisher of the *Times* and say, "My experts tell me that in these Pentagon Papers there is much material that is dynamite, and I would like the opportunity to have my experts talk to your editors." The *Times* would have been in the same box as it was on the Bay of Pigs and in the missile crisis. It might not have wanted to cooperate, but the Government could have made a convincing case. But they went with a club instead, and it didn't work.

WICKER: If for some reason the Government had known that we were getting ready to publish those documents and had done precisely as you suggest before we published them, then I can't answer for what would have happened. I assume that there would have been some degree of cooperation. If the President had done that the same night that we got the telegram from the Justice Department, when two articles had been published and the third was on the press, then I think our hand would have been forced, because we had made such a commitment to our staff and to our readers that I don't believe it would have been possible to retreat.

KRASLOW: You might not have stopped, but you might have eliminated some material.

GEYELIN: I believe that there could be some tricky passages in the Pentagon Papers that most people would read without knowing they have anything to do with intelligence. But even if there conceivably could be material in those documents that we wouldn't recognize as revealing a capability of intercepting, of decoding, that would be

damaging, the way they went about trying to retrieve that after they lost it was futile.

WICKER: I think there may be passages in the documents, even in the analysis itself, that in a conjectural sense are valuable. Professional opinions lead me not to believe in the code-cryptological argument. None of these documents were written after the *Pueblo* incident, which must have had an enormous impact on our cryptology.

KRASLOW: The one time that I sought Government guidance on a sensitive security matter I came to regret it: In August of 1960, during the Eisenhower Administration, when training for the Bay of Pigs was begun, they were recruiting Cuban refugees in Miami, but the plan for the invasion had not yet been formulated. CIA director Allen Dulles said that story, if published,

"Failure could lead to an Official Secrets Act . . ."

would be very damaging to the national interest. That is what they will always say.

SMALL: You can get very nervous about the heavy-handed manner in which government is moving against the press, most particularly vis-à-vis the Pentagon Papers. But I get far more nervous about some of the things we are discussing: the idea of government talking in the backroom to editors, talking about what should or shouldn't be published. If you look at the arguments for and discussions of the First Amendment, you find that the Founding Fathers felt that the press, with all its excesses, had to be there; and it didn't have anywhere near the kind of responsibility that the press has today. No matter what Mr. Agnew tells us, the fact is that newspapers and networks and local stations today are far more responsible in

everything they do than they ever have been—far more so than in any other country with anything resembling our kind of press.

Thomas Jefferson—who was abused far more than Mr. Nixon, despite what Mr. Nixon has said about being the most-abused President ever—knew and stated that the existing press, even though it lied and cheated, had to be there; and he was right. Most of the publishers were pamphleteers; the Zenger case involved nothing more than someone publishing political tracts. But it was thought important that independent media exist because they were the only restraint on government. And it is far truer today than it ever was.

I think we ought to have minimal communication with public officials about what is or is not rather sensitive. We all know that this President or any other would not want the Pentagon Papers published. He is not going to say, "Look, there are ten sensitive items"; he is going to say, "There are 7,000 sensitive pages—don't publish any."

WICKER: We're getting away from an essential distinction here. Don't forget that in the Cuban missile crisis, for example, our approach to the Government was basically for a confirmation of facts. Then the appeal was made. I can't conceive that any citizen, if called by a President or a Secretary of State or Defense who made a national security argument, would not listen. Then, in my view, you make your own decision.

GEYELIN: We are dealing every day with classified material. The question is in what form we present it. Every time that Henry Kissinger has a backgrounder at the White House, we are playing a game. We can't be two-faced about it. We take classified information on the Government's terms all the time. It may not be in the form of a Xeroxed document, but they release it all the time, when it is in their interest.

This is the point that Max Frankel made eloquently in his affidavit in the *Times* case [page 22], as did thirteen of our reporters who described their dealings with government. At the very highest levels the day-to-day traffic in classified materials is enormous. We can't pretend that we are

not constantly in this arbitrary relationship with the Government over classified material.

SMALL: One more point about the plea that there are times when nobody would resist a government suggestion that something should not be published: a lot of this is in a gray area. If you take Potter Stewart's question about endangering 100 troops, my instinct at least is to say that we wouldn't want to endanger ten men, much less a hundred. But I can see a case in which, if there were 100 American soldiers stashed away in, say, Guatemala, and a newspaper learned that Amer-

"An ongoing struggle the press has not detailed . . ."

ica was about to make a move toward Guatemala then not to publish that would perhaps endanger thousands of men. You then have a different kind of question. I always lean on the side of not taking government's advice, unless it is so clearcut that there can be no question—something such as, as has been suggested, information about a new secret weapon.

Do you think a reform of the classification system is needed, and if so what kind?

KRASLOW: I think we need much, much closer oversight by Congress in this area. One interesting proposal by Senator Cooper and others would make CIA intelligence estimates available to members of Congress so that Congressmen can make more informed judgments. The apparatus is not systematized to the point where people can grapple with it intelligently. When Henry Kissinger moved into the National Security Council offices, he found the cupboard bare; even the walk-in vault in the Situation Room at the White House didn't have a scrap of paper. All these classified goodies Lyndon Johnson and Walt Rostow had wrapped up and carted off to Texas; it

has become traditional that Presidents in particular consider classified papers which came into being during their administrations as their personal property, to be declassified at their own will and for their own convenience and perhaps profit.

You know, Lyndon Johnson has made good money from CBS and is making good money on his memoirs, to be published by Holt Rinehart & Winston, and he has all this classified material at his disposal. Who is sitting in judgment on him as a private citizen declassifying all this material? Is the Attorney General of this Administration seeking authority to enjoin Lyndon Johnson from publishing that material until he can determine whether this would be in the national interest?

WICKER: There is a great deal to be done before we ever get to the question of declassification, and one thing is that the Government itself ought to have the most stringent rules for classifying documents. One high official in the Government told me he routinely classifies anything that goes through his office TOP SECRET, not on the rationale that this is the only way to get other officials to read it, but because in the entire time he has been in government nobody has given him really rational reasons for classifying a document or not. Several hundred other people have similar power. That is obviously a system with no security at all.

KRASLOW: You can't name an official who ever got into trouble by classifying a document.

OTTEN: Every government is going to try, not just by stamping pieces of paper but in other ways, to keep its actions secret as long as it thinks they are potentially unpopular. The job of the press is to dig out as much as it can. I think that practically anything that under a less restrictive classification system might not be stamped TOP SECRET you can get out of a man in personal conversation—you can usually do that so long as it is not so sensitive that it really deserves to be top secret.

GEYELIN: And the system carries its own corrective. To me that is the big contribution the New

too many problems with our own credibility. There are too many people who don't believe what comes out in the papers, any more than they believe what comes out of the White House or anywhere else. I think there is an educational job to be done.

WICKER: I think there is a larger question. That is, due to conditions since the Sixties there is a collision between men who on the one hand believe, in good faith and perfect honesty, that circumstances are such that the authorities have got to have more power to maintain order and achieve their purposes; and, on the other hand, men who believe in good faith and perfect honesty that in the circumstances we are in if we don't preserve the largest possible measure of individual liberty, we won't preserve anything. I think you can see this in law enforcement, in the whole growing field of data storage and retrieval; and so on. It is not just a press question.

That really is what the Supreme Court argument turned on: Must we give up individual protection in order that the State may do what the State thinks it ought to do? The crucial thing is how many people think the State ought to do that and are perfectly willing to make that sacrifice. I think that this is an ongoing struggle, and with rare exceptions the press has not even begun to detail this struggle, much less illuminate it.

OTTEN: I have a feeling that we are in trouble. What the polls show on the rights of a free press is that all too many people feel we don't have the right to go into the things we go into. We have

THE VIET WAR-DATA EXPLOSION

The Justice Department has persuaded Federal Judge Murray Gurfein to stop temporarily N.Y. Times publication of secret Pentagon report on the Vietnam war and there



Robert Strange

Who passed the 47-volum. collection to the Times? Whoever did so should be prosecuted, we believe, to the limit of the law.

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Sen. Mike Mansfield (D-Mont.) says he plans a probe which, as he blueprints it, would be a fishing trip designed to end in a gorgeous whitewash of Mansfield, Fulbright, other "moores." Senator Mike Mansfield, Democrat, Pres.

The First Amendment on trial

Where we stand: a legal view

It was a landmark decision, says a legal scholar—of comparable importance to the John Peter Zenger case. But to what extent was it an advance?

THOMAS I. EMERSON

Do you regard this as a particularly unusual period in press-government relations?

■ In one sense, yes. In legal theory, the press probably has more protections now than it has ever had. But in terms of the social climate and the attitudes of the Administration, there is probably more pressure on the press than at any time since World War I.

Historically, the press has been subject to very considerable controls. At the end of the eighteenth century, shortly after the Constitution was promulgated, the Alien and Sedition Acts were passed and then used to a large degree against newspaper editors. Prior to the Civil War, Abolitionist newspapers were not allowed in the South. During the Civil War there was considerable interference with the press: Lincoln and his generals closed several newspapers, deprived papers of the use of the mails, and enforced intensive censorship of Copperhead newspapers. Then, in World War I a German-language newspaper in St. Louis was

prosecuted under the Espionage Act on charges of printing false and misleading reports and slanting the news on military operations.

I think such restrictions would clearly be impermissible as Constitutional law now stands. The whole development of the First Amendment, which really began only in 1919 in Supreme Court decisions arising out of World War I, has given the press a much more secure position.

Would you describe the cases that began the modern era of the First Amendment?

The initial cases arose out of the Espionage Act of 1917, which prohibited conduct that would tend to create insubordination in the armed forces. The Act was applied to inhibit criticism of the war. Gradually, as time went on, the Supreme Court shifted, and particularly with the beginning of the Hughes Court the Justices were willing to uphold the right to criticize the war and the Government generally. The area of speech protected by the First Amendment expanded quite substantially in the 1920s and 1930s, but was then set back somewhat by the decision in the Smith Act cases of 1950-51. But since then it has again

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progressed through cases such as Julian Bond's, which indicates that any expression, no matter how critical of the war it may be, is protected by the First Amendment. So I think that in theory, the newspapers have a pretty strong Constitutional grounding.

Of course, there are many ways to influence and control the press other than by criminal prosecutions. And one now gets the distinct feeling that the Government is attempting to exercise control. I think of the speeches of Vice President Agnew; the New York *Times*-Washington *Post*-Boston *Globe* case; actions by the FCC under the new chairman; the Caldwell subpoena case; and various other indications that the Administration seems to be willing to apply pressures on the press of a character and intensity that I think have not been applied for more than a half-century.

Would you trace the roots in law of the New York *Times* case?

In the period shortly after the printing press was introduced in England, a series of laws and regulations brought into being a very elaborate system of censorship; not only did everything that was published require advance approval either by ecclesiastical or secular authorities, but also the number of printing presses was limited, the number of printers was limited and licensed, there was a whole system of advance censorship of anything printed. It was against this that John Milton made his famous speech in Parliament in 1646 that was reprinted and published as *Areopagitica*. After the laws expired it became accepted as part of British law that no advance censorship, no advance approval be required. The sedition laws still prohibited printing material critical of the Government, but the Government could not prevent publication in advance even of material that could constitute an offense. The theory was that a system of advance censorship is much more restrictive than post-publication prosecutions.

That was the situation at the time the First Amendment was adopted as part of the Bill of Rights in 1791. The Court on several occasions has said that the main purpose of the First Amendment was to guarantee that British censorship laws

would never be applied in this country. When the prior restraint issue first came up, in the Hughes Court in 1931, it was in a case called *Near vs. Minnesota*, which involved the so-called Minnesota Gag Law. That law provided that any newspaper which printed scurrilous and defamatory material could be subject to an injunction, and it was applied to a Minneapolis newspaper that printed an attack on the city administration. The Court, for the first time facing a situation somewhat comparable to the British censorship laws, held that the obtaining of an injunction against publication was a violation of the First Amendment; that one of the principal purposes of the First Amendment was to prevent a system of advance censorship. The Court thus incorporated into American Constitutional law the doctrine of no prior restraint.

The Court did say there were some exceptions to the doctrine. But the only exception it had allowed prior to the New York *Times* case was one permitting movie censorship boards to screen a film in advance for obscenity. And it clearly indicated it was talking only about films.

What influence do you believe the Court's 1971 decision will have on the freedom of U.S. news media?

The result was certainly favorable to a free press. Put the other way, a contrary result would have been a disaster. It would have made the press subject to a very considerable extent of advance restriction. It would have changed the whole relationship between the press and the Government. The outcome was a sound outcome. On the other hand, the legal theory that the Court adopted is, I think, cause for concern.

Only three Justices came out strongly against a system of prior restraint—Justices Black, Douglas, and Brennan, and Brennan would make some very narrow exceptions. Black and Douglas apparently permitted none. Justice Marshall probably would go along with them, but actually he based his opinion on a different ground—on the ground that Congress had denied this power to the President, and the Court therefore didn't get into the question. But if you assume there were four who

would vigorously apply the doctrine of no previous restraint, nevertheless there were five whose opinions seriously undermined the doctrine against prior restraint. Certainly the three dissenters would have made exceptions, but also Justices Stewart and White announced that any anticipated publication which raised an immediate danger to national security would be grounds for an injunction, and the dissenting judges apparently would have gone at least that far.

Now, there are two legal problems there. One is that the exception which is made—that you can have advance restraint of a newspaper if the Government proves a grave and immediate breach of national security—is a very wide-open exception: very broad, very vague, covering a large amount of territory that would probably allow the Government to obtain an injunction in most cases where any issue of national security was raised. It would certainly be far more restrictive than the previous situation was considered to have been.

There is also a second problem. That is that even if the courts ultimately interpret the concept of “grave and immediate breach of national security” rather narrowly, the very application of the rule will constitute a system of prior restraint. The Government can come in and allege a grave and immediate breach of national security; the Court will then issue a temporary restraining order; publication will be held up while the Court looks to see whether there is a breach of national security; and the whole process of applying the rule will itself be a system of prior restraint. So in legal theory the press is in a rather vulnerable situation if the Stewart-White doctrine is adopted. Of course, the Court hasn’t decided that, but that was certainly the implication.

Presumably the circumstances of the New York *Times* case would not arise very often: it is rather unlikely that a newspaper would have such a massive collection of documents to publish at one time. Similarly, the press by now presumably has learned that it would not be enjoined if it already had published something, and presumably it wouldn’t tell the Government in advance what it had. So as a practical matter the press may be able to protect itself in spite of the rule that the Court seemed to be laying down.

On the other hand, if one assumes that a newspaper publishes classified material on several occasions over a period of weeks, or maybe a month, the Government might well then come into court and say, “We don’t know exactly what the newspaper is going to publish next, but they have displayed a pattern of publishing classified materials. We don’t know what their sources are, but they must have some source, and we want to enjoin them from printing more classified material.”

That is an extension of the New York *Times* facts, and an extension of the theory of the case, but not much of an extension. A court might well say, “If publication of material that would cause grave and immediate injury to the national security can be prevented when the Government knows about it in advance; if the Government is pretty sure, because the newspaper has done it in the past, that more is coming out, what is there to prevent us from enjoining the newspaper from publishing any more classified material?” At that point you have a system of prior restraint that

“Pressures of a kind not applied in a half-century . . .”

could be even more restrictive than the rule of the New York *Times* case. In other words, once you take the position that the rule against prior restraint doesn’t apply in a national security situation, then it is not a very large step to say that if a newspaper has sinned once, the Government can prevent it from sinning again.

Are you suggesting, then, that even though Congress might bring about a change in government classification policies, this wouldn’t necessarily protect the press in a severe test?

The Court certainly did not take the position that anything that is classified cannot be published. It did take the position that it would ex-

amine material to see whether what was about to be published would be a grave and immediate breach of national security. So the classification system by itself is not decisive. But as a factual matter, that pushes the Court in a direction of suppression because if it is something that the Government has classified then it is likely that publication could be represented as a breach.

One commentator has pointed out that suppression for even two hours, let alone two weeks, can make moot the dissemination of something urgent.

Any delay is serious—certainly a delay long enough for a court to look at material. In addition, the court has to hold a secret proceeding—which is what it did in both the *Post* and the *Times* cases. The Government's argument is that in order to persuade the Court that this is a serious breach of national security it will have to tell all the facts as to why, and therefore the very process of proving its point will cause a breach of national security unless the hearing is in secret. So you have the Court holding secret proceedings from which the public is excluded. Besides that, the Government said, "No one can be permitted to come to these proceedings unless he has a security clearance." So the Government could determine what lawyers and what members of the press would be allowed to participate in the hearing. In other words, the very process of deciding in advance gets you into secret judicial proceedings, and that is a very serious thing in a democratic society.

In this case, did the Government ask for secret proceedings that would exclude the newspapers?

Yes. It asked the Court for secret proceedings, and it asked counsel for the newspapers to name the persons they wanted to be present at the secret proceedings, and then they cleared those persons in Washington. Only those persons cleared by the Government were admitted to the secret proceedings. So the Government even had control of who appeared. The newspapers' counsel could attend, if they got clearance—but they had to get

clearance. Third parties such as the American Civil Liberties Union weren't admitted. If they had been, they would have needed clearance, too.

In addition, the Government submitted two briefs in each of the cases. I represented twenty-seven Congressmen who filed a brief as *amici curiae*. We served our brief on the Solicitor General, as is customary. He is supposed to give us a copy of his brief. He gave us a copy of his public brief, but would not give us a copy of his private brief. So there were secret briefs which were available only to the Court, not to the public.

Has this ever been done in our history in a case involving the press?

Not that I know of. There have been instances in espionage cases involving state secrets, in which there has been limited access to materials, but those have been very, very few. Even there, the defendant can't be convicted on the basis of anything that isn't submitted in the record, so the Government has to disclose the material or drop the prosecution.

What else was noteworthy about this case?

At least one other aspect: that the Court really did nothing to advance the doctrine of the right to know. In this case there were two components of the right to know: the general public's right to know, and also the legislature's, the Congressional right. Now that is a very important area of First Amendment rights, an area that is just beginning to be developed in law. Nothing could be more important to a democratic system than the right of citizens to all information on which to base decisions. Any democratic society is going to have to develop some legal principles in that area.

Could Congressional action help here?

Of course the Freedom of Information Act—the Moss Act—is directed toward supporting the right to know, and many states have passed statutes making the proceedings of boards, commissions, and state agencies open to the public. There has been the beginning of a movement by statute

supporting the right to know. But it is rather feeble. The federal Freedom of Information Act exempts all national security matters, and many of the states have extensive exemptions. It's just a beginning, but it is a beginning, and people are commencing to realize the importance of it. It certainly would have been given an impetus if the Court had been able to say something about it.

Would you place this case on a level with the John Peter Zenger case in its implications for journalistic freedom?

I think it was of comparable importance to the Zenger case. I would say it's probably more important than the *New York Times vs. Sullivan* libel case, and on a par with the Smith Act case (*Dennis vs. the United States*), and the case involving the Internal Security Act (*Communist Party vs. United States*). It is truly a landmark decision.

Would you comment on recent cases of subpoenas of journalists' notes and film?

Obviously this is an exceedingly important matter. If the Government can obtain information about sources and about material that the reporter doesn't use, his sources of information can be materially curtailed, and the way a story is investigated and researched could presumably be changed. The reporter wouldn't keep notes, and people he talked to wouldn't be as free. It would clearly have a very serious effect.

Until recently the law has afforded very little protection to a reporter in this area. The law started from the point that the Government was entitled to any information which it could otherwise legally obtain through the judicial process, that it was the duty of all citizens to give information to the Government that was relevant to some legal issue or some legislative issue. The exceptions to that were very narrow—husband-wife, doctor-patient, a few other confidential relationships were the only ones recognized.

The press, when called upon to produce information that it felt would violate confidences, usually has refused, and in a few cases reporters

have gone to jail for it. But by and large the press has persuaded the courts not to force the issue, and as a practical matter the courts weren't interested in tangling with the press.

Since the Government has forced the issue, the courts seem to be modifying their position somewhat. In the Caldwell case, for instance, the Ninth Circuit court held that the Government would have to show compelling reasons why it needed the information; that the reporter would not even have to appear before the grand jury unless the Government could show in advance compelling reasons and show that it couldn't get the information elsewhere. But the concept of "compelling reasons," like the concept of "grave and immediate breach of national security," is so broad that the courts would have great leeway in applying it, and the consequence would be that no one would know what his rights were. The reporter wouldn't know how far he could go, and the person talking to the reporter wouldn't know how far he could go. A whole chilling effect would occur. A rule that is too vague is almost worse than no rule at all. I would hope that the Supreme Court, when it decides the Caldwell case, would come out with some very specific and restrictive rule.

Where do the news media stand in other area such as libel law?

Libel is an illustration of development of First Amendment doctrine beneficial to the press. Originally the law of libel grew up independently of the First Amendment, and although it promised a good deal it never delivered much. It was pretty hard to win a lawsuit and collect money, but the legal position of the press was very vulnerable. When libel issues arose in a political context with the civil rights movement in the Sixties—that is, when Southern opponents of the civil rights movement sued the *New York Times* and the broadcasters for libel, based really on political criticism—the Court had to face the problem of how to reconcile libel laws and the First Amendment. In doing so, the Court went quite far in protecting the press, laying down the rule that criticism of public officials, even though false, was justified unless actual malice was proved—definite realiza-

tion that a statement was false, and a desire to publish it whether it was false or not. That rule has been extended not only to public officials but to public figures, and most recently, in the *Rosenbloom* case, extended further to apply to any matter of public concern.

I think that even the "actual malice" restriction is too broad; I agree with Justices Black and Douglas that leaving the issue of malice up to a jury reopens the whole question and deprives the press of a great deal of protection which it otherwise would have. Nevertheless, as applied so far the rule has been a major protection. Even the newest Court appointees went along in extending the *Times* doctrine to public issues.

Where do we stand in assuring broadcast media First Amendment protection?

There now are two main problems. One is a noticeable tendency by the Federal Communications Commission to restrict broadcasting in various ways. The Commission has adopted, or shows signs of adopting, stricter rules about "offensive" or vulgar material. The chairman has officially announced that that is what he would like to do. That could easily lead to interference with political commentary. Another aspect is the FCC's attempt, subsequently modified, to limit songs that deal with drug problems.

The Federal Communications Bar is quite worried about the likelihood that the FCC may press rather far in the direction of censorship, which could tend to political censorship. I think the courts would probably block any formal overt action in that direction, but the FCC operates unofficially to a large extent, and it can make an impact without revoking somebody's license and thereby posing a clearcut legal issue. It's a question of the broadcasters standing up to the FCC and not letting it go too far.

The other main problem in broadcasting regulation is the application of the Fairness Doctrine, the equal-time doctrine, and other FCC regulations which concern the variety of material that comes over the air. That is extremely important. The whole system of freedom of the press and expression depends on having access to a variety of

viewpoints, and the viewpoints that come over the air are quite narrow in scope.

The FCC is presently considering a revision of the Fairness Doctrine. My feeling is that the revision should be very strongly in favor of the Government requiring stations to open their facilities to more viewpoints. I think that because radio and TV are limited facilities, the efforts of the Government to permanently promote greater variety of expression through the fairness rule and similar doctrines would be consistent with the First Amendment.

In recent weeks some commentary, including commentary from the legal profession, has seemed rather hostile to the kind of journalistic freedoms you have been discussing. What might the news media do to create understanding of the stakes involved?

I would say one of the main things that the media can do is to educate the public to the significance of the whole system of free expression. The idea of a free press and freedom of expression is a rather sophisticated concept for a politically mature people, one that we have worked out extensively in the last forty or fifty years but which only a limited group understands and realizes the import of. The natural inclination, as Holmes said long ago, when you don't like what a fellow is saying is to shut him up. I think that there has to be great effort made to have a really full understanding of it, and I think the news media have an important obligation there. I think the *New York Times* case has opened up the possibility of making people aware of what the role of the press is; that its role isn't simply to take handouts given by the Government; it's for the people.

The major problem with the system of freedom of the press today is the inability of many points of view to find an outlet. That is a very serious problem. I think that it is important for the media to be aware of that, to anticipate it, to try to take account of it. In other words, just as I think the Government ought to subsidize an opposition to itself, in a sense monopolistic elements in the communications industry should subsidize some opposition to themselves. I think it would be a much healthier and ultimately more successful system.

The First Amendment on trial

'When everything is classified, then nothing is classified,' wrote Supreme Court Justice Potter Stewart. Why classification reform is imperative.

What should be secret?

JAMES McCARTNEY

■ On Sunday, July 11, President Nixon's national security adviser, Henry Kissinger, was on a secret mission to Peking arranging an unprecedented visit to China by the President. In view of that, the lead story on page 1 of that Sunday's *Washington Post* is singularly fascinating. It reads:

WASHINGTON—President Nixon is faced with a strong Pentagon recommendation to transfer American nuclear weapons from Okinawa to the island of Taiwan, the Nationalist Chinese stronghold. The Defense Department, it was learned, has urged that the President shift the weapons, which must be moved off Okinawa, to Taiwan.

Somehow, at a strategic moment in international relations—a moment when fundamental relations between two great world powers could be affected—someone planted information in the *Post* that could be expected to upset Kissinger's host. It was clearly a blatant "security" violation. Pentagon recommendations to the President are always secret, and nothing is more highly classified than the location of U.S. nuclear weapons.

Only a few weeks earlier the Nixon Administration had gone to court to try to prevent publica-

tion of parts of the "Pentagon Papers" as a breach of "national security." Yet no investigation was ordered to try to find this "leak"; Attorney General John Mitchell made no threat to file suit; the *Post* heard nothing about the story from high Administration officials.

What happened? The incident was another example of how the U.S. Government's highly developed "classification" system works—how the system is used by individuals to achieve their own political ends; how "classified" information has become the plaything of Government administrators, who use inside knowledge as power in attempting to sell causes, stop projects they oppose, or otherwise manipulate public opinion; indeed, how the classification system today is so far out of control that the results frequently are a threat to "national security."

The *Washington Post* story of June 11 is a case in point. All indications are that the objective of those who gave the *Post* the material was precisely opposite that inferred by the casual reader. In all probability men with inside information—unaware of Kissinger's secret trip—were trying to shoot down the Pentagon's recommendations to put nuclear weapons on Taiwan. The State Department, the story disclosed, was "re-

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portedly opposed" to the Pentagon's recommendations "on several grounds, including possible repercussions on the U.S. effort to improve relations with the People's Republic of China."

The front-page game-playing with classified information easily could have backfired. The leaders of mainland China might readily have drawn the conclusion that Kissinger—and President Nixon—were double-dealing in seeking to set up a Nixon visit to the Mainland. Kissinger's trip could have been abortive. Unlike the Pentagon Papers case, however, about ten days later the White House quietly let it be known that the Pentagon recommendations had been rejected, and the story was forgotten.

The incident is typical of what can happen in the jungle that the modern classification system has created. As Max Frankel points out on page 22, it is normal to see "classified" information in the pages of practically all U.S. newspapers. The system is grinding out so many "classified" documents that administrators must "leak" information in order for the Government to function—for programs to receive support. The result is what might be called a pattern of selective leaking for political purposes; the administrator can choose what he wants to make public according to his desire to sway public opinion.

The package from which he can choose is immense. William G. Florence, a retired Air Force civilian classification officer, told a House subcommittee that at least 20 million classified documents are on file in the Pentagon. The precise total can only be estimated on the basis of cubic feet of files. According to Florence, "less than one half of 1 per cent" need to be classified.

The Pentagon, under Defense Secretary Melvin Laird, routinely leaks information from classified documents to create an "atmosphere" consistent with current desires for defense spending. Early this year the Pentagon leaked information through Democratic Senator Henry Jackson of Washington that the Soviet Union might be building a powerful new missile—perhaps even more powerful, Jackson hinted, than the Soviets' huge SS-9 missile with a 25-megaton warhead. The next day the Pentagon asked Congress for more money for the U.S. Minuteman III missile program.

As the year progressed, Administration objectives began to change. President Nixon announced in May that "progress" had occurred in Strategic Arms Limitation Talks (SALT) with the Soviets, that some agreement might be possible on antiballistic missiles and on offensive weapons like the SS-9 and the U.S. Minuteman. Suddenly estimates of Soviet missile capabilities were less frightening. A report soon appeared in the *New York Times* suggesting that the SS-9 was not nearly as accurate as many had previously believed—and thus the U.S. Minuteman missiles were apparently not in any serious immediate danger. Still later, Republicans in the Senate leaked a report from the Central Intelligence Agency indicating that the Soviets were not really building new missiles, as suggested in the Jackson leak, but were only reinforcing missile sites and thus not accelerating the arms race. The classification system again was being used for political purposes.

Former President Lyndon Johnson often quoted from classified documents, even on national TV. On a show telecast on Feb. 6, 1970, Johnson was asked by Walter Cronkite about a report that his last Defense Secretary, Clark Clifford, had initiated a reappraisal of Administration policy in Vietnam. "That's totally inaccurate," Johnson replied. "Now if you would like to, Walter," he said, producing a classified memorandum, "I'll declassify them (the records) now for a moment." While millions watched, he read from a classified document.

David Wise, former Washington bureau chief for the defunct *New York Herald Tribune*, remembers when Johnson, in 1965, handed him a document labeled SECRET to try to justify his intervention in the Dominican Republic. The document, a Central Intelligence Agency report, said that 1,500 to 2,000 persons were dead on the streets of Santo Domingo before U.S. troops had been dispatched. "I think the point is made," says Wise, now a Woodrow Wilson international scholar in Washington, "that State secrets in Washington are handed around like popcorn by presidents and other officials when it suits their political purposes."

Wise also tells how the Government has manipulated classification procedures to try to con-

ceal the fact that satellites may be used effectively to police arms control agreements. In 1965, he says, the Arms Control and Disarmament Agency asked the Defense Department to make an unclassified study of satellite surveillance technology. The U.S. had long argued publicly that Russian resistance to "on-site" inspection was preventing an arms control agreement. The study, drawing completely on unclassified materials, demonstrated that satellite surveillance could do the job, says Wise. Then, "after much bureaucratic infighting, the unclassified study was graded TOP SECRET, meaning that it could result in 'exceptionally grave damage to the nation.' No copies of the study have ever been published."

Walter Pincus, a former investigator for the Senate Foreign Relations committee, cites another example. In 1969, Pincus was helping assemble the story of U.S. activities in Laos for a

"Using the system to achieve their own political ends . . ."

Senate subcommittee investigating U.S. commitments abroad. In secret hearings in October, the subcommittee received a detailed listing of U.S. personnel killed in Laos, broken down by governmental agencies: Army, Air Force, Agency for International Development, and so on. In March of 1970, however, the White House released a statement that U.S. activities in Laos had been exaggerated. "For some reason, still unknown to us," says Pincus, "the White House statement included the phrase that no Americans stationed in Laos had been killed in ground combat."

A few days after the White House statement the press obtained names of several Americans who had been killed in Laos. The White House responded with a general statement that records had become confused and it could be said only that some 200 Americans were either killed or missing in Laos. When the time came for "declassifying"

the transcript of the secret hearings, the Government insisted that the figures in it could not be made public. To this day the White House has not admitted that Americans have been killed in ground combat operations in Laos.

William Florence, the former Air Force classification officer, says that "hundreds of thousands of individuals at all echelons in the Department of Defense practice classification as a way of life," reflecting the belief that "information is born classified and that declassification would be permitted only if someone could show that the information would not be of interest to a foreign nation." In the theory of the original classification system, established in an executive order in November, 1953, however, only a few hundred officials in the Pentagon could classify information. A system of "derivative classification authority" has resulted in the monster that Florence describes. The consequence, he says, is that "any individual who can sign a document or who is in charge of doing something" can classify. That means that "hundreds of thousands" of people in the Defense establishment have the authority.

All this means that ridiculous matters are often listed as TOP SECRET. Florence tells of the chief of staff of one military service who wrote a note to other chiefs of staff stating that too many papers were being circulated with the TOP SECRET classification. "Believe it or not," says Florence, "the note itself was marked TOP SECRET."

The Navy not long ago was discovered to have labeled some newspaper clippings in its files SECRET, even though they had obviously been read by thousands of people. The result was a special Department of Defense directive telling the Navy not to classify newspapers. Florence testified, however, that the practice of classifying newspaper clippings continues in the Department of Defense—in spite of the department's own directive to the Navy.

U.S. Solicitor General Erwin N. Griswold, in arguing the Pentagon Papers case, admitted there is "massive overclassification." "There is not the slightest doubt in my mind," he said, "that there has been as long as I can remember, which is quite a while, massive overclassification of materials, and there has been much too slow review to

provide declassification." Indeed, on June 22—after the first Pentagon Papers had been published—the White House announced that the President had ordered the National Security Council "to review current classification procedures to enlarge the American people's right to know more, not less." Ironically, the study had been ordered earlier but was kept confidential.

However the study proceeds, the problem will not be easy to solve. One basic corrective, all seem to agree, is to reduce the number of documents being classified. A second, corrective is to provide automatic declassification procedures so that each piece of paper won't have to be re-examined separately. Under current procedures, established by Executive Order 10501 in 1953, all government agencies are supposed to "downgrade" classified information automatically every three years. Thus a report marked TOP SECRET in 1959

"Thousands of persons practice classification as a way of life . . ."

would, in theory, have been downgraded to SECRET in 1963 and to CONFIDENTIAL in 1965. Now—twelve years later—it would theoretically be declassified. But the system is rarely followed.

In fact, Florence testified, over the years only about 1 per cent of the information that should have been automatically declassified has been declassified. In his long experience he added, it was a "rarity" for a TOP SECRET document to be downgraded either automatically or by review.

In all probability nothing worthy of note on declassification will occur until two problems are squarely faced. One is the atmosphere in the Pentagon and much of the rest of the foreign policy and defense establishment; the other, the multiplicity of classifiers. All of the rewards, all of the incentives in the Defense establishment are in the direction of maximum secrecy.

Supreme Court Justice Potter Stewart, in his

opinion on the Pentagon Papers, suggested that the best way to achieve the secrecy truly vital to national security is to avoid secrecy that is not vital. "For when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical and careless and to be manipulated by those intent on self-protection or self-promotion." The hallmark of a truly effective security system, he added, "would be the maximum possible disclosure, recognizing that secrecy can best be preserved when credibility is truly maintained."

The Justice has eloquently stated the principles to be followed. But it is unlikely that an internal—and secret—effort to redraw the rules will produce such a change. For real progress to occur there probably must be a national study commission, with adequate resources, working openly, with public witnesses. The commission should take time to focus attention on the problem and on possible correctives. Then some sort of continuing body could be created to police classification—first to catch up on the backlog, then to keep the slate clean. But such a commission is nowhere in sight, and nobody seems to be urging one.

The only deep-seated interest in Congress so far has been displayed by the House Government Operations Committee's Subcommittee on Foreign Operations and Government Information. Once widely known as the "Moss Committee" (for its former chairman, California Congressman John Moss), the subcommittee held exploratory hearings on classification after the Pentagon Papers were published. The new chairman, Rep. William Moorhead, a liberal Democrat from Pittsburgh, expressed suitable outrage. Florence and others testified. But so far the subcommittee has come to no conclusions.

"It's like grabbing hold of a plate full of jelly," says staff director William G. Phillips. "There aren't any obvious answers. What's going to come out of it? I don't know and neither does anyone else right now." Further hearings may be held this fall, he says, and eventually the subcommittee staff may draft a report with recommendations. One possibility would be legislation to replace Executive Order 10501.

"It would duplicate the Executive Order, but

try to plug the loopholes," he says. "We'd have to have rules to try to prevent overclassification, perhaps with administrative penalties; we'd have to have a new system of downgrading classification automatically; we'd have to have a review authority." But Phillips clearly has doubts that such a law could be effective. "Even if it were possible to write a law, it probably couldn't be enforced. The bureaucracy is still in control no matter how many directives may come down from above and no matter how many laws may be passed."

Senator Edmund Muskie of Maine has suggested an independent review board with power to make documents public after two years. Senator

"There probably must be a national study commission . . ."

Hubert Humphrey of Minnesota has suggested a joint Congressional committee to review classified material. Neither approach seems to have much steam behind it. "The truth is that most members of Congress aren't particularly concerned about classification," says Phillips. "Many of them don't understand it. It's not a big issue."

Congress has its own problems in getting information out of the Executive Branch. Senator Fulbright and colleagues on the Foreign Relations Committee say that they simply can't play their Constitutional role in a government with balanced powers if they can't find out what is happening—and much of the time, they admit, they can't. Fulbright essentially is not battling classification—he is battling what is called "executive privilege," the Executive Branch's claim that it can tell Congress only what it pleases. The distinction is important because members of Congress are scarcely models of behavior in confiding in the masses: they continue to hold most of their important committee sessions behind closed doors—their own system of "classification."

While there are no signs that Congress is on

the verge of a meaningful attack on classification, Congress unquestionably can be a valuable ally of the press in prying out information. Senator Stuart Symington has illustrated the principle in a series of hearings on U.S. commitments abroad. The hearings were held in executive sessions, but Symington and subcommittee staff members have fought the Executive Branch, line by line, to "sanitize" transcripts and release a maximum amount of information. The subcommittee's reports, nevertheless, are often wails of anguish at what the Administration has insisted on deleting.

If Congress, with its powers of prestige and the subpoena, cannot crack the classification system for itself, the plight of the press and broadcasting is even more serious. In part, however, this is the news media's own fault. Perhaps their most notable failure has been the failure to dramatize the classification problem as it has grown over the years. The public, as national polls have shown, is vaguely aware that national administrations have been less than candid, but the media have done a poor job of explaining the mechanics, the tragedy, of the modern classification mess. As in Congress, it hasn't been a "big issue." If it is not made a "big issue," reform is unlikely.

Until that day comes—until a new and effective system is devised—the news media have only one weapon with which to fight back—the aggressiveness of individual reporters and editors in seeking out information and getting it into print. If reporters and editors do not seek out information, regardless of whether it is classified; if they don't try to spot dissidents and get them to talk or to leak material, information will not be published. The press has no way of getting its hands on 20 million classified documents. It cannot do the basic job of reform. But the system can be beaten now and then. To the credit of the press, it has been beaten.

Seymour Hersh beat the classification system in exposing the My Lai massacre. He got a tip and pursued it until he had it verified. Neil Sheehan of the *New York Times* beat the system in obtaining the Pentagon Papers. Reporters are beating the system every day as they go after stories, ask probing questions, pursue suspicions. They are the best declassifiers the nation has.

The First Amendment on trial

"The need for press freedom is not simply an intellectually elegant idea. The open society avoids catastrophic accumulations of maladjustment."

What did we learn?

BEN H. BAGDIKIAN

■ To the casual eye, the newsroom of the Washington *Post* at mid-afternoon of June 30 must have looked normal—normal, that is, for the *Post*: cramped, noisy, anarchic-democratic, the most interesting journalistic slum in America. There were no obvious signs of stress created by nearly three weeks of the most extraordinary events in the history of American journalism.

At one end of the newsroom the *Post*'s owner and publisher, Katharine Graham, and its executive editor, Benjamin Bradlee, and a small band of associated sufferers were awaiting word from company lawyers at the Supreme Court building, two miles away. In the middle of the newsroom, Mary Lou Beatty, deputy national editor, held an open telephone line to the Supreme Court pressroom, waiting for the paper's court reporters to be handed the printed decision. In a communications room, Eugene Patterson, then managing editor, monitored the wire machines in case the word came first from them. Suddenly Miss Beatty held up her hands as she listened to a court reporter at the other end of the line riffle through the fifty-six-

page decision. She yelled toward the executives, "It looks as though we've won." Then Gene Patterson rushed out of the wire room, leaped onto a desk, and with his hands cupped around his mouth shouted, "We win, 6-to-3!"

In the euphoria of the newsroom that afternoon and throughout the country's journalistic establishment in the weeks since, something ominous seems to have escaped notice. It is not the fact that the newspapers and journalists might be criminally prosecuted or cited for contempt when asked to testify about their sources—though at this writing there is a grand jury sitting and the Government is emanating strong signals. The journalists are affluent and well known and will march to court with much public notice and skilled lawyers, and at worst will probably avoid the psychopathic horrors of contemporary prisons; it is the uncelebrated little people who get quietly locked up on dubious grounds without glory.

The euphoria is unjustified because the Supreme Court decision probably signalizes not the triumphant end, but the start of a struggle. The astonishing cluster of major issues involved in the court case moves onward with an uncertain future: legitimacy of the war in Vietnam; deception

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by the Government; secrecy in government; and freedom of the press.

This is not to slight the accomplishments so far. The New York *Times* acquired the Pentagon Papers first and took the icy plunge without benefit of precedent. Once the *Times* was silenced, the *Post* went ahead knowing that it would be hauled into court and knowing that the Nixon Administration hates the *Post* and the *Times* with a passion deeper than Spiro Agnew's thesaurus. Other metropolitan papers followed the silencing of the *Post* and *Times* with their own slices of the secret papers. Like relics of St. George, whose spine is in Portofino, skull in Rome, a hand in Genoa, a finger in London, the bits and pieces of the Pentagon Papers had escaped their secret reliquary in the crypts of the Government and reappeared throughout the country in a finally credible sense of reality about the Government and the war and a metastasized affront to the Espionage Act. The major papers did not shirk their duty and the Supreme Court upheld them.

But the Supreme Court victory should not obscure some troublesome facts. Courts officially ordered American newspapers not to publish certain materials because these materials offended the Government (like all censoring governments, Mr. Nixon's claimed that the offensive material would do grave and irreparable harm to the nation). From June 15 to June 30 there was official, effective, court-enforced suppression of information in the hands of American newspapers. Nothing prevents the Government from bringing similar suits in the future, and win or not in the Supreme Court it can suppress information for a period of time and intimidate a paper.

Government antagonism to the press is not new or bad. The press shouldn't expect to be loved. Franklin Roosevelt had a running battle with publishers, Harry Truman ridiculed "newspaper talk," Dwight Eisenhower viewed the press with cool contempt, John Kennedy enjoyed periodic outbursts of venom on the subject, and Lyndon Johnson's sentiments about newspapers would cause Bella Abzug to blush. But this Administration has a special attitude toward the working press that is ideological and cultural, it has a political stake in spreading hatred of the metropoli-

tan press, and unlike other administrations that fought with the press this one has an itch for the jugular.

A major reason given by some judges for refusing the Government request was that Congress had not yet passed a law giving the President the power to censor the press. If such a law existed, these judges said, the decision might have been different. In 1917, in a time of war and hysteria about spying, Congress specifically voted down an amendment to the Espionage Act that would have made the President a censor. In 1950 during

"The tendency of this court is not encouraging . . ."

the height of McCarthyism, the Espionage Act was amended to say—with puzzling implications—that nothing in the Act shall infringe on freedom of the press. Secrecy in government is by Executive Order, not law.

Given the Nixon Administration approach to the free press and broadcasting, the tendency of this court is not encouraging. Only three justices—Black, Douglas, and Brennan—explicitly turned their backs on the idea of both Presidential and Congressional power to censor. Justice Black said that when he reads that the First Amendment says Congress shall make no law abridging freedom of the press, he interprets "no law to mean no law." To which Erwin Griswold, Solicitor General, representing the Government, replied, "I can only say, Mr. Justice, that to me it is equally obvious that 'no law' does not mean 'no law'. . . . The First Amendment was not intended to make it impossible for the Executive to function or to protect the security of the United States." Each of the nine justices felt impelled to write a separate opinion, and if one reads these for attitudes on the legitimacy of Congress' taking up a measure to give the President censorship powers, the apparent willingness to accept this is 6-to-3.

The reversed 6-to-3 is ironic, but so was much more in the case. The New York *Times*' regular law firm, Lord, Day & Lord, did not take up the case. Its head is former Attorney General Herbert Brownell. The Washington *Post*'s law firm, Royall, Koegel & Wells, did take up the case. Its former head is the present Secretary of State and presumably one of the aggrieved parties in the printing of the Pentagon Papers, William P. Rogers. The case also saw those "strict constructionists," John Mitchell and Richard Nixon, asking the Supreme Court to "make law"—that is, give the President powers that Congress had refused.

Some judges asked in all earnestness why a responsible newspaper would not ask the Government what part of official papers it could publish. It is a discouraging question, asking that papers accept informally what the First Amendment forbids officially, putting a construction on "responsible" that makes the press an instrument of official policy on the most vital issues. This was not the kind of issue the framers of the Constitution had in mind. King George III didn't mind if the colonial press reported on the weather; it was all that disrespectful information about royal governors and tax collectors that it printed without the advice and consent of the local Governor. The First Amendment was not written with the idea that the press would be free to print the names of donors to the Santa Claus Fund but have to ask the Government for permission to write about war and peace.

In addition there seemed in some justices to be a personal hostility to the press. Chief Justice Burger wrote, "To me it is hardly believable that a newspaper long regarded as a great institution in American life would fail to perform one of the basic and simple duties of every citizen with respect to the discovery or possession of stolen property or secret government documents. That duty, I had thought—perhaps naïvely—was to report forthwith, to responsible public officers. This duty rests on taxi drivers, Justices, and the New York *Times*." He added in a footnote, "Interestingly, the *Times* explained its refusal to allow the Government to examine its own purloined documents by saying in substance this might compromise their sources and informants! The *Times*

thus asserts a right to guard the secrecy of its sources while denying that the Government of the United States has that power."

Judge Blackmun exhibited the same feelings. He wrote, "... the Washington *Post*, on the excuse that it was trying to protect its source of information, initially refused to reveal what material it actually possessed. . . ." He concluded, "I strongly urge, and sincerely hope, that these two newspapers will be fully aware of their ultimate responsibility to the United States of America. . . ."

What emerged throughout the case was a dangerous naïveté among judges, lawyers, and others about government propaganda, the frequency with which government agencies break the law or improperly invade privacy, and the true relationship between the federal government and the press in Washington. The grim and terrible condemnations about "secrets" look different when you know that highly placed government officials, beginning with the President of the United States

"True security lies in knowledge, not secrecy . . ."

and his Cabinet, the Joint Chiefs of Staff and their staffs, regularly and systematically violate the Espionage Act—or at least the Attorney General's interpretation of it—by knowingly and deliberately disclosing secret information to the press. [See articles elsewhere in this issue by James McCartney and Max Frankel.]

The quantity of military secrets that appear in the press is directly related to appropriation hearings for the military services. If the Air Force wants a few billion dollars for a new weapons system, it leaks a few secrets that put the system in a good light. Two days later the Navy leaks other secrets about the same weapons system showing that it fails much of the time. Or the State Department, wanting to bluff another nation, lets out a secret that is a half-truth, then denies it the next

day as "newspaper talk." And perhaps the Pentagon, which disapproved anyway, leaks the whole story of how the State Department leaked a half-truth. The net result is probably good because it is the only present remedy to secret government, but the point is that the U.S. Government is the biggest player in town of the Leaking Secrets Game. Only when the secrets are embarrassing do the words "national security" come into play.

The idea that in matters of secrecy and responsibility the press is beholden to "the United States of America" sees the Government as a policy monolith. There is no such entity, either in the

"The wisdom of Elmer Davis: 'Don't let them scare you' . . ."

Constitution or in practice. It is a pluralistic organism whose parts work on each other with various mechanisms, one of the more important being information. If the press did not obtain secrets or was not handed secrets on a silver platter, the Government would have to invent some other way of getting out sequestered information.

The harm done by disclosure of secrets is minimal; the harm done by concealing information inside the secrecy system is enormous. President Kennedy ultimately told the *New York Times* that it should have printed more about the Bay of Pigs invasion of Cuba rather than less. Both the *Times* and the *Post* knew about the U-2 airplane flights over Russia months before the story broke. Both suppressed it in what they thought was the national interest. Soviet Russia knew about the plane all the time—its radar picked it up—but for a while it lacked planes and missiles with the range to shoot down the plane. Nonpublication merely kept the information from the Russian and American publics, a convenience to each government whose implications are interesting indeed. Ultimately the U-2 was shot down, with the result that lives were endangered, a sum-

mit conference was wrecked, and a Presidential visit to Moscow cancelled—the usual scenario of what it is said will happen if secrets are published.

It seems safe to predict catastrophe if information is disclosed. If the information is protected by secrecy the prediction can never be tested, and keeping the secret seems the more prudent course. But intelligent, diligent men differ on the consequences of printing sensitive information. Justice White examined the Government lists of "worst cases" it wanted suppressed in the Pentagon Papers and said he was confident that publication by the *Post* and *Times* "will do substantial damage to public interests." Justice Stewart looked at the same lists and said, "I cannot say that disclosure of any of them will surely result in direct, immediate, and irreparable damage to our nation or its people."

The judges were not the only ones who differed on the wisdom of publishing. There were arguments within the papers themselves. The *Post* reached its initial decision after about twelve continuous hours of intense debate. The argument, involving lawyers, editors, reporters, and management, was fierce and prolonged. It ran through one deadline and was finally resolved five minutes before the deadline for the main edition. In the end, Katharine Graham took the full weight of argument and said yes.

As the lawyers and later the judges began looking beneath the awesome claim of TOP SECRET they began to see that it was seldom justified. List after list submitted by the Government to the Court in secret was shown to be filled with items already in the public domain or already known to adversary nations. The Government official brought in to testify in secret court session on how bad it would be to publish the documents later told Congress that at least 6,000 pages of the 7,000 should not be classified.

Newspapermen in Washington already knew things like that. Last year during the heat of an armaments debate, the *Post* received in a plain envelope without return address a Xerox of a document marked, SECRET—SENSITIVE. We called the Pentagon to confirm the document's authenticity and then printed it in full. It was a memorandum from Secretary of Defense Melvin Laird to his

service secretaries and other military officials telling them they should say nothing in public that might imply that it would be good to have a moratorium on deploying MIRV missiles or ABMs. It was a directive to subordinates on what to say in public on an important public issue—a natural enough impulse from an official trying to win an argument among his rival officials in government. But SECRET? The *Post* received a letter from the Department of Defense telling it to turn over the memo under pain of prosecution under the Espionage Act.

When Mr. Laird was a member of the opposition in Congress, he wrote a stiff letter, in October of 1966, demanding to know the Government's negotiating position in the Vietnam war, including how many American troops we were offering to pull back in return for how many enemy troops. He demanded publicly that the Government "should spell out clearly and unequivocally what our short-term aims and long-term objectives are with regard to South Vietnam and Southeast Asia."

The issues involved are too profound to argue about whose ox is being gored, though that impels much of the secrecy machinery. What is more basic is that even when there is a discernible

reason for keeping information secret, every piece of information marked SECRET erodes the basis for a free society. It excludes the citizen from the process of his own government, and that is a cost that has to be put into the "national security" equation.

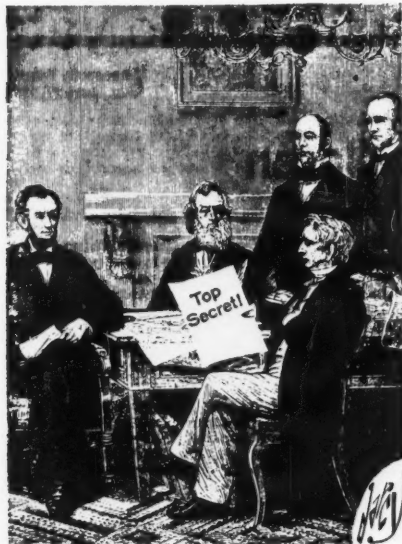
This country was started on the assumption that legitimate government derives its powers from the consent of the governed, and if that means anything those who are governed have to know what their government is doing. Yet we have lived under the spreading mystique of the official secret for so long that there is an assumption that information about public affairs is the private property of the Government. Somewhere, somehow, the burden has shifted from the Government having to prove why it should conceal information, to the citizen, who now has to prove why he should be told. The Solicitor General even argued the analogy of the copyright law to the Supreme Court.

The country seems to have lost sight of the fact that true security lies in knowledge, not secrecy. During the Supreme Court hearing Justice Stewart asked the *Times'* lawyer, Alexander Bickel, whether he would change his insistence on the Constitutional right to publish if doing so would result in the death of "100 young men whose only offense had been that they were nineteen years old and had low draft numbers."

The information in the Pentagon Papers covers the years 1945-1968. The documents were not published during that period. More than 1 million Indochinese have been killed, more than 50,000 young Americans were killed, we have spent \$120 billion dollars, and have descended into one of the most poisonous eras in our time. The calculation of the costs of secrecy is not small.

The need for press freedom is not simply an intellectually elegant idea. The perfect secret is useless because information is powerful only if it causes men to understand their environment better. If information is secret, not enough people know enough to put the information to use, nor to correct errors. The open society avoids catastrophic accumulations of maladjustment because everyone in the system is free to express himself and be heard by those who can make adjustments.

**'Abe, I got a great idea for fooling
all of the people all of the time . . .'**



—Darcy, *Newsday*.

"Responsibility" is not a safe standard. What is irresponsible to one man is responsible to another, or at another time. When Richard Nixon was a member of Congress he and his friends were prepared to send men to jail for suggesting normalizing relations with the Communist government of mainland China. It was a "bad," "treasonable," "subversive" idea. President Richard Nixon is now planning to go to China in order to start normalizing relations with the Communist government of mainland China.

The free marketplace of ideas, and the press's role in it, is not a luxury, nor is it a sometime thing to be tolerated only when it pleases the authorities. The press itself needs to remember its obligations. When the press insists on making its own decisions on publishing official information independent of government it is sometimes painted as arrogant. But the reverse is true. For a newspaper to know something to be accurate and important and not to trust the public with it is arrogant. To withhold the truth from the public is to hold the public in contempt.

Justice Burger was amazed that the press would not give up its documents while criticizing government secrecy. Justice Blackmun thought that the *Post* was using protection of its sources as an "excuse." The fact is that government has the full force of its police powers to shut off the porosity of information that saves the United States Government from the sickness of secrecy.

The anger of government at press intrusion is an ancient emotion. Roger L'Estrange was Licensor of the Press in London in 1680. He said: "A newspaper makes the multitude too familiar with the actions and councils of their superiors and gives them not only an itch but a kind of colorable right and license to be meddling with the Government."

Governments never like to be meddled with. But it happens to be the whole idea of the American political system.

Having won in the Supreme Court, the press now must fight the more insidious self-censorship that comes when it tries to avoid future confrontations, when it concedes in the newsroom what it won in the courts. Better than Roger L'Estrange is the more contemporary wisdom of Elmer Davis, who said in the height of the Joe McCarthy era:

"Don't let them scare you. For the men who are trying to do that to us are scared themselves. They are afraid that what they think will not stand critical examination; they are afraid that the principles on which this Republic was founded and has been conducted are wrong. They will tell you that there is a hazard in the freedom of the mind and of course there is, as in any freedom. In trying to think right you run the risk of thinking wrong. But there is no hazard at all, no uncertainty, in letting somebody else tell you what to think; that is sheer damnation."

Vancouver, B.C. Sun, July 19, 1969:

Striking
coincidence
department



"We've got First Avenue pretty well blocked, Stone Street effectively closed, most of downtown mostly stopped... now, I figure if we start digging here..."

San Francisco Chronicle, Dec. 20, 1970:



"We've got Van Ness fairly well blocked, upper Market is effectively closed, most of downtown bottled up... Now I figure if we start digging right about here..."

Notes on the art

Bad writing and new journalism

■ In the preface to his book *The Courage of Turtles*, Edward Hoagland makes an offhand but telling comment about one of the problems of current journalism. "First-person journalism is fashionable now," he writes, "though the excesses of its practitioners are going to kill off its fashionability soon." It is a perception that could be applied to the entire range of writing called the New Journalism.

Much of the critical discussion about the New Journalism has centered on what it is doing to the art of reporting. Those problems were discussed by Gerald Grant in these pages ["The 'New Journalism' We Need," Summer, 1970]. The feeling among many reporters is that New Journalism has allowed emotions to substitute for facts, instead of to amplify them, and that this has produced sloppy reporters and in some cases, shallow stories—something New Journalism is supposed to prevent. Grant wisely asked that the New Journalism take the form of more thorough research, more study of the literature in a specific field, more discussion among reporters about the stories they are covering, more reliance on academic experts, and most importantly, more reliance on one's own brain—in short, a New Journalism based not so much on subjective feelings and senses but on more arduous research and independent thinking.

But that is only one facet of the

New Journalism: reporting. The other is writing. If we are to expend greater effort in gathering material for a story, at least as much effort should be given to writing it. Grant wrote: "We don't need a whole new breed of novelists in action. . . . We do not need more passion but more intellect, more understanding." Although I agree with his overview I don't think it would hurt if reporters asking to play by the rules of New Journalism had more of a novelist's sense for writing.

The freedoms of current journalism, just as they have given rise to sloppy reporting, also have fostered sloppy writing. Not that there hasn't been poor writing in newspapers before ("The difference between literature and journalism is that journalism is unreadable and literature is not read," Oscar Wilde once observed), but if we are to continue to argue for more freedom in newspaper writing, we should demonstrate more awareness of how and when to use it.

I am of that generation of writers unduly influenced by the delights of Tom Wolfe, and I am also of that generation labeled as activists, or "advocacy journalists," by older members of the media. We have been subjected to a number of pressures, including peer-group pressure, that have led us away from journalistic forms popular a decade ago toward something we believed, with the encouragement of our elders, was better.

I do not mean to rediscover here the roots of the New Journalism, for that has been covered before. But as in other areas of society we were attempting to find a better way to tell the story, and so we grasped quickly for what was new. Unfortunately, we still seem to be grasping for something we don't really understand.

In a Columbia University discussion between Wolfe, Gay Talese, and Harold Hayes of *Esquire*, printed in the January, 1970, issue

of *The Writer*, Hayes said that as good as Wolfe was, he had probably ruined a generation of writers. I am not so sure that Wolfe has ruined us so much as he fooled us. We all read in the introduction to *The Kandy-Kolored Tangerine-Flake Streamline Baby* how, after many false starts, he sat down one night and hammered out his piece on customized cars in one great burst, and how *Esquire* knocked off the DEAR BYRON from the beginning and took it unchanged. And we read his marvelous articles, with all those exclamation points and dashes and gassy colors and hip talk, and we were lulled into believing that journalism was easy if editors would loosen the reins a bit.

We didn't penetrate his aqua Malacca malaise enough to realize it wasn't the colors or the punctuation or the hip talk that made Tom Wolfe good. It was instead the abilities of a Ph.D. in American Studies to see things in our society which no one else recognized as being significant. Nor did we consider his apprenticeship on papers like the *Washington Post* or the *Herald Tribune*.

Dan Wakefield used to say in a class he conducted at the University of Illinois that some of the best writing we would do would be in letters to friends because we would not feel the inhibitions of form. And we were a little disappointed when things we wrote still sounded rough and shallow, for we had failed to listen when he had said that if we all sat down and said, "I'm going to write this piece like it's a letter to my friend," that we would be no better off than before.

Norman Mailer's *Armies of the Night*, as most now recognize, pushed us even farther because hundreds of us had gone to the Pentagon, either as participants or reporters, and had failed to come to grips with it in any way comparable to Mailer. Of course we blamed that on form, not on ourselves. We didn't relate Mailer's

earlier political pieces, his reports on the 1960 and 1964 conventions, to the Pentagon book. We simply related the book to what we had written—form against form—and believed Mailerian thoughts rested in all of us, waiting to be sprung.

Such influences have caused experimentation with style, form, and subject matter, and that is hopeful. Newspapers today are livelier for it. But after several years of this journalistic thaw there is still an indication that we are no more comfortable with these new forms than we were when we first tried them, that we have no better understanding of what those forms can do and when they should be used.

For a majority of the articles printed in newspapers, the various techniques of New Journalism are unnecessary and often detracting. Most stories are still printed for the information they contain; New Journalistic techniques often block presentation of that information.

We now see stories with Wolfian leads, rich and full of description, which quickly trail off into standard feature interviews with stock questions and stock answers. We see description for description's sake. Endless Salems and Winstons being smoked, legs continually crossed or uncrossed, glasses pushed up on the forehead. We are reading a lot more about the sky and the trees and the grass without really knowing why they are important to many of the stories in which they are used. We see endings tacked on with no sense of fulfillment or irony, or even—sadly—conclusion; pale descriptions of actions or movements of interviewees getting up and walking away, which do more to stop a story than to end it.

What this indicates is that articles aren't being "written" any more now than they were under the shackles of "old journalism," but now they are filled with all kinds of literary sidelights which often add only words and wasted space. Stories are written fractionally—a

good lead here, some flourish in the body there, occasionally a thoughtful, conclusive ending; but rarely are there threads of continuity that show thought from beginning to end. It is, I'm afraid, the old journalism with a few frills being passed off as the new.

Why has this happened? Part of the reason is that, as young reporters, we came to believe we would be better journalists if we were allowed to write instead of just report, and so we began to try to write without studying the craft of writing in the ways we had studied reporting. We felt that the difference between writing and what we were accustomed to was simply a loosening of the old formulas, when in fact it was not that at all. It was a tightening of thought patterns and word associations and ideas, an extension beyond the old formulas, that demanded all the earlier skills, which added the discipline to subdue the easy phrases and combinations and to search for something better.

One way to do this, I was told a few years ago, is to read good writers. Unfortunately, this does not mean to read newspapers, because of the great bulk produced daily only a scant portion has good writing as well as good reporting. But if we are striving for a newspaper form which blends both, then we must read all we can.

We must read and study those reporters whose abilities to ferret out illusive facts stand above normal standards. And we must also read those who are experimenting successfully with the more elegant forms of nonfiction writing; writers like Ward Just, whose blend of reporting and writing gave his book *Military Men* dimensions far beyond the normal presentation of facts; like David Halberstam, whose proven abilities as a reporter have been enhanced by his more recent talents as a writer; like Richard Rhodes, who seems to end an article as well as anyone writing these

days; like Gay Talese, who is perfecting the technique of the internal monologue; like Garry Wills, and Anthony Lukas, and others.

No, we do not need novelists on our newspapers, but if we could get some of our best young reporters to study the writing process, our writing standards would likely improve. But unless there is some impetus for this, some force apart from those of my generation who are using or abusing the newer forms, it will be a slow process. This is where the role of the editor becomes critical, for if he does his job properly, with intelligence and toughness, young writers won't fall into some of the habits of bad writing.

Journalists of my generation have not been edited severely, and this is unfortunate because we have not done it to each other. Many of us gained early experience on college newspapers, and—good training grounds as they are—they are not a place where critical editing takes place, either because we were too concerned with our own writing or because we did not know the functions of a good editor. But in any creative process there must be constant critical evaluation, and it is important for young journalists because we are not dealing with formulas as much as before.

There is the belief that once a young writer leaves the sanctuary of college and is subjected to the pencil of a pro, he will shake the bad habits. This is simply not true. On smaller papers, where most of us start, a young, aggressive reporter can write and write and write and see his experimentations appear in print nearly untouched. This gives him a false sense of his own talents, for on these papers it is difficult to find editors who will give the kind of thoughtful evaluation needed. This is where the excesses begin.

On larger papers it is difficult, I am told, to get editors to sit down long enough to give a young writer the kind of personal attention he needs. This is not a condemnation

of editors, but as Paul Swensson told the American Society of Newspaper Editors a few years ago, there must be a change in philosophy in editing, one that moves away from editing sentences and paragraphs to one which considers the scope of the whole story, from changing faulty mechanics to eliminating faulty thinking.

Young writers could help accelerate this by demanding that editors really edit, by literally forcing editors to tell them where the soft spots are. They are hesitant partially because they don't often have confidence that editors will treat their stories as reporting and writing. It is difficult to watch a paragraph formed with thought and care excised thoughtlessly because it did not meet standards of formula journalism.

Editors could help also by recognizing some of the patch jobs that are crossing their desks as just

that, and by explaining to young reporters the times to hammer and the times to write. We are not so unreceptive that we will not listen to reasoned judgments by editors who know their craft. Too often we have not gotten this, and now we are defensive when it happens because we believed we were good. I remember times when journalism professors gave me such talks, and although I argued with them, in the end I sat down and rewrote, and through those somewhat painful sessions began to realize the influence of good editing on a piece of writing.

If they do their jobs well, editors will not only find fault with the reporting, they will find fault with the writing. And most importantly, they will demand that a reporter rewrite, from top to bottom if necessary. Understandably, there is a problem of deadlines, but as newspapers move away from this fixa-

tion—especially on the kinds of stories which will demand good writing and reporting—editors should not feel the pressure of the clock and a large hole forcing them to print something they feel should be improved.

Those who say, "This is what you should do next time," will not make their points in the same way as editors who say, "This is what you must do before we print this." Such forcefulness may cause some bloodletting in our newsrooms, for who among us does not suffer from pride of authorship? But it will probably result in stories which come closer to achieving standards of New Journalism we now only pretend to meet.

DANIEL J. BALZ

Mr. Balz is a graduate assistant in journalism at the University of Illinois.

Paging Mr. Post

—Washington Post,
Feb. 25.

Nation's Business



PUBLISHED BY THE CHAMBER OF COMMERCE OF THE UNITED STATES • WASHINGTON, D.C. 20006

February 1, 1971

Mr. Washington Post
Stock Room
1515 L. St. N.W.
Washington, D.C. 20005

Dear Mr. Post:

Here's how to help yourself move ahead...either with Stock Room...or in any executive opportunity that may come along for Washington Post.

At this juncture in your career Mr. Post, the three book set could be particularly valuable to you. And it's a natural companion to go with NATION'S BUSINESS. By trying NB you would regularly receive many more practical ideas for moving ahead to an advanced position on your next promotion.

All we're suggesting is that you try NATION'S BUSINESS and we'll immediately send you the three book set - FREE, of course. Simply fill in and return the enclosed card today.

Cordially,

Philip A. Sweeney
Director of
Circulation

P.S. There are no strings attached to this special offer, Mr. Post. You can cancel at any time with full refund of your unused subscription (or cancel your invoice)...but the three book set is yours to keep regardless of your decision on the magazine.

Books

The black press yesterday and today

EDWARD PEEKS

THE BLACK PRESS, U.S.A. By Roland E. Wolseley. Iowa State University Press. \$10.50.

THE BLACK PRESS (1827-1890). Edited by Martin E. Dann. G. P. Putnam's Sons. \$7.95.

□ The black press stands at a crossroads, as it has repeatedly in the struggle of Negro Americans for their Constitutional rights. But this time the crossroads denote more uncertain directions than ever. One road which beckons is the broad route to social and economic justice for black and white together; the other, the side route to racial separatism and the isolation of black nationalism.

There was a time, however, after the days of chattel slavery, when no doubt existed about the course of "justice" for a black American charged with murdering a white. All too often, the lynch mob took over before the ink had dried on the police blotter. In this atmosphere the black press had no doubts about either its role or the goal of its readers. They shared a sacred mission to remove once and for all the certainty of mob rule and brutal disregard for the Constitutional rights of black Americans. Together, the volumes compiled by Martin E. Dann and Roland E. Wolseley reveal much about this often neglected past role of black newspapers, as well as offering insight into present problems plaguing print and broadcast media owned by black Americans.

From *Freedom's Journal*, started in 1827 by John B. Russwurm and Samuel E. Cornish, to the

Edward Peeks, a former reporter for the *Baltimore Afro-American*, now is business-labor editor of the *Charleston, W. Va., Gazette*. His book *The Long Struggle for Black Power* recently was published by Scribner's.

Cleveland Gazette published by H. C. Smith after the Civil War, black voices made the Negro press what it traditionally was considered—a protest press. About 525 black publications appeared between 1827 and 1890, but few of them survive today. Yet what these publications stood for lives on in the Dann volume, which anthologizes the personal journalism of black men and women under such subjects as the role of the black press, the black view of history, politics, labor, migration, and emigration.

The Dann anthology, as does the Wolseley study, defines the black press as an institution owned and operated by black Americans for black Americans. In his selections, Dann adheres faithfully to this definition, making it an anthology of Negro voices expressed through means launched and controlled by them. For this reason, some classic writings are omitted. Others are excluded because they are familiar selections in general anthologies on black America, in biographies, or in social commentaries. This discriminating selection gives the volume an extra measure of force and diversity as black men and women speak up for their rights.

Before the Civil War, the black press attracted white readers who were mainly abolitionists. Literacy was low among free persons of color. Some who could read were too poor to buy a newspaper. Others refused to identify with the cause of freedom advocated by black publications. Frederick Douglass hardly ever had more than 3,000 circulation at any time between 1847 and 1863, the year that hard times and the Civil War forced him to suspend publication.

Wolseley makes clear the distinctions between black newspapers and magazines. While differences exist in format and production, however, there are similarities in the historical growth and development of the newspaper and magazine for black readers. W. E. B. Du Bois' monthly *Crisis* magazine and Robert S. Abbott's weekly *Chicago Defender*, for example, gained mass circulation about the same time during World War I. Both advocated black migration from the plantation South to the industrial areas of the North; both championed civil rights and sharpened the cutting edge of the protest press; both had the help

of black Pullman porters who assured delivery to Negro communities, North and South. When the Great Depression struck, both *Crisis* and *Defender* circulations plummeted.

Circulation burgeoned in the 1940s—defense industries not only brought new prosperity to black America, but the war intensified the protest role of the Negro press. It attacked job discrimination in defense industries and the mistreatment of blacks in uniform. The war against Nazism fired up the age-old belief in self-help, better known today as “black power.” (Now, as then, the belief by any name embraces racial solidarity, loyalty, economic progress for the group—a means to full citizenship rights, not an end in itself for separatism or white supremacy in technicolor.) At the same time, news about Negroes increased in the general press.

In 1942, John H. Johnson began his phenomenal rise as a black publisher of magazines, beginning with *Negro Digest*, now called *Black World*. *Ebony*, the circulation leader of Johnson Publications, once came under fire for skimming the “cream” of Negro life with success and society stories while ignoring the plight of the black masses. It is a different story now. *Ebony* and the weekly *Jet* are mining the current fad of “blackness.” *Ebony* has an audited circulation of more than a million; *Jet*, 415,000.

Veteran black newsman Ted Poston of the New York *Post* once pointed at *Jet* and remarked, “That’s what killed the Negro Press.” The black press, however, is still very much alive [see “The Black Press in Transition,” Spring, 1970]. It includes the Johnson Publications, some 225 newspapers with more than 2 million readers, plus magazines such as *Sepia*, *New Lady*, *Essence*, and *Tuesday*. The latter, with a circulation approaching 2 million, is a supplement stuffed in metropolitan dailies once a week and distributed in Negro communities. There are three black dailies: the Chicago *Daily Defender*, Atlanta *Daily World*, and the Columbus, Ga., *Times*.

Wolseley notes that the black press faces increasing competition by radio and TV for news and advertising. Of some 110 radio stations beamed at black communities, only a handful are owned by blacks—in contrast to the hundreds

of newspapers and magazines they publish. Such competition is a major challenge.

The Negro weekly also is challenged to go daily in large cities where the black population continues to increase. Prospects appear to be just as good in Washington, Cleveland, and a score of other cities as they were nearly forty years ago when W. A. Scott started the Atlanta *Daily World*. Perhaps better. The embattled cities of the nation, teeming with black and white lower classes, need a press steeped in hope and committed to work for social and economic revival, one

“The Negro weekly is challenged to go daily in cities . . .”

eschewing the common emphasis on editorial handwringing by metropolitan dailies over loss of the traditional tax base to the suburbs.

Many businessmen, labor leaders, and public officials know that the exodus cannot continue indefinitely without ultimately dooming suburbia itself; that the city must be revitalized through commerce, industry, housing, health facilities, schools, and other means that improve the quality of life for urban and suburban residents alike. The black daily has a base on which to stand as an advocate for urban rebirth. Not the least pillar of that base is the growing Negro middle class, including those who exercise their right and opportunity, where it exists, to move to suburbs. The black daily would help determine goals aimed at mutual benefits for black and white urbanites; it would seek to root itself in the lives of working class people, reporting their births, marriages, and deaths; it would offer consumer news and services, along with national and international news. The black press now gets more advertising than ever—another base on which to build—and, though newspaper production costs

are high, there are cost-cutting and labor-saving devices such as offset printing and computers.

Wolseley, who teaches journalism at Syracuse University, suggests the possibility of this kind of urban daily, but in fact believes that the future favors black magazines. The magazine fits the trend to what he calls "the specialized periodicals," as opposed to mass consumer magazines. "As the white newspapers cover the black society more and more," he says, "the black magazine will supply readers with depth writing, fiction, and other materials for the ethnic group which will not, in sufficient quantity, be available through white periodicals and which cannot reasonably be expected to appear there." This point is so deserving of further study it might well become a project of the black National Newspaper Publishers Association.

Wolseley's *The Black Press, U.S.A.* brings the history of Negro journalism up to date, taking up where Armistead S. Pride left off in *A Register and History of Negro Newspapers in the United States: 1827-1950*, an unpublished Ph.D. dissertation at Northwestern University. Edwin K. Welsch, in *The Negro in the United States*, observed that the black press "has not received the scholarly research attention it deserves." Wolseley gives it deserved attention. He enlarges the picture of the black press as an institution and a business enterprise as well. In doing so he offers a broader view than does Vishnu V. Oak in *The Negro Newspaper* (1948), which concentrates on the black newspaper as a civil rights champion and a case history of small business.

Wolseley also examines public relations and broadcast journalism as they relate to the contemporary black press and its future. (Black public relations firms are becoming increasingly important as consultants in big business and government, thus influencing information channels expected to yield news of particular significance to Negroes about employment, housing, and health matters.) Wolseley's research sometimes gets in the way of his writing, and he tends to crowd dates, periods, and personalities. This leads to some minor errors of fact. But on the whole he has produced a many-sided study which few books on the subject can rival.

Book Notes

DON'T BLAME THE PEOPLE. By Robert Cirino. Diversity Press (Box 45764, Los Angeles, Calif. 90045). \$2.95 paperback.

□ It is not hard to see why twelve publishers rejected this book. Its author, Robert Cirino, is a thirty-four-year-old Los Angeles school teacher with no news media experience or customary critic's credentials. He is a careless speller ("*Encyclopedia Britannica*") and a B-minus grammarian ("the media reveals its bias"), some of his information is out of date ("Walter Annenberg seemingly uses his position as publisher and editor of the Philadelphia *Inquirer* . . ."), and some of his sources (*Time*, *Fact*) are suspect. A few of his conclusions are dubious; for instance, that the media could have saved millions of lives by informing the public long before the Surgeon General's Report that smoking is dangerous. (No one knew the risks better than James Monahan, a *Reader's Digest* senior editor, but he once admitted having puffed more than two packs a day while writing eight anti-cigarette articles for the *Digest*.) Yet if Cirino throws some wild punches, he lands many more solid ones.

Cirino argues that Vice President Agnew's attacks on Eastern liberal newspapers and broadcasters have been "a godsend" to all wings of the Establishment because they have "diverted the public's attention from the monopoly of control over access that is enjoyed by conservatives and moderates." Cirino's central thesis is that the media should provide an open marketplace for the free exchange of all viewpoints, popular and unpopular, left as well as right. But "the limits of controversy . . . include the radical right at one end and the moderate liberals at the other. This shuts out the solid liberal and the radical left and allows . . . Spiro Agnew . . . to attack middle-of-the-roaders and moderate liberals as more liberal than they in fact are." Denying anti-Establishment voices equal access to the mass media, he says, leaves a distorted picture of reality.

With painstaking documentation, Cirino makes

a convincing case that the media have failed to give adequate coverage to such disparate ills as malnutrition, alcoholism, venereal disease, rapid population increase, environmental rape, and unsafe and shoddy merchandise. Violent crimes by individuals are overplayed and nonviolent crimes by corporations, including overcharges by utilities and defense contractors, are underplayed. Criticism of religion—particularly of Catholic Church policies—was rare until recently, as were revelations of war crimes in Vietnam.

Breaking up concentrations of media ownership, he says, may increase competition for audience and advertising, but "real competition among all viewpoints still can never come about so long as access to the media is determined by ability to purchase rather than by the right to be heard." In the end, the fault lies with "a national policy that permits the communication system to be utilized for profits instead of for a lively journalistic competition between various viewpoints and perspectives." Cirino could have added—but didn't—that dissent is given even shorter shrift by state-owned media in many other capitalist as well as socialist countries. But that doesn't excuse what goes on here.

Don't blame the people for swallowing fallacies and following false leaders, Robert Cirino is saying in this personally published 341-page brief. Look to the misleaders themselves—and the system that supports them.

A. KENT MacDOUGALL

A. Kent MacDougall reports on the press for the *Wall Street Journal*.

TELEVISION TODAY: THE END OF COMMUNICATION AND THE DEATH OF COMMUNITY. Edited by Ralph L. Stavins. Published for the Institute of Policy Studies by Communication Service Corporation, Washington. \$9.95 or \$6.50 softcover.

□ This volume comes close to being a mere grab-bag of materials collected by Washington's Institute of Policy Studies, a nongovernmental research group. It has articles, official documents, transcripts of meetings—none of them appearing

to deal specifically with the portentous topic announced in the title. Fortunately, this clutter is offset by a highly worthwhile centerpiece, Stavins' ambitious statistical study of the performance of TV stations in the Middle Atlantic region (Virginia, Maryland, West Virginia, the District of Columbia). The survey not only amasses telling detail on programming and employment practices at twenty-eight stations, but ingeniously offers a ranking of the stations according to fulfillment of their licensees' promises. Backed by these classifications, Stavins urges federal investigations of seven stations, most notably WMAL, the ABC capital affiliate owned by the Washington *Evening Star*. The top ranking goes to WAVY, an NBC affiliate in Portsmouth, Va.

THE FOURTH ESTATE: AN INFORMAL APPRAISAL OF THE NEWS AND OPINION MEDIA. By John L. Hulteng and Roy Paul Nelson. Harper & Row. \$4.50 softcover.

□ Two members of the University of Oregon journalism faculty have compiled this primer "to help readers become more understanding and more discriminating consumers of the products that the mass media thrust at us every day, and nearly every hour, of our lives." The presentation is nicely balanced, neither ducking major criticisms of the media nor failing to give credit where due. If the book has a fault, it is in scope. The early portions, dealing with news issues in terms of newspapers as "the representative medium," is well focused, but much of the rest becomes cursory as the authors try to deal not only with broadcasting and magazines, but with book publishing, advertising, public relations, and even film.

Still, the book is redeemed at the end by two chapters dealing with the Constitutional and legal rights of the press and of the public in dealing with the press. There is one injunction in particular too little heeded by the mass audience: "Every consumer [of media] ought to avail himself of any opportunities at hand—a local press council, a letter to the editor, a demand for correction of a factual error, a note of praise for fine reporting—to let the managers of the media know what kind of service he wants." →

THE LEFT-LEANING ANTENNA: POLITICAL BIAS IN TELEVISION. By Joseph Keeley. Arlington House, New Rochelle. \$8.95.

□ Opportunity aplenty exists for building a conservative case that TV—especially TV news—displays a nonconservative bias. But this book, through aimlessness, largely squanders its chances. Time after time, the author, who was editor of *American Legion* magazine, lets his attention drift to bring up old grudges against other media, to vent personal dislikes, or to attack communism and defend the Vietnam war. Working his way through a patchwork of old clippings and stray notes, Keeley fails to offer either a substantial new body of evidence or a strong argument.

The appendices, which occupy more than a third of the book, shine by contrast. The text of Vice President Agnew's famous Des Moines speech of Nov. 13, 1969, is worth rereading. A Congressional staff report on the CBS *Hunger in America* supplies the kind of damaging detail so lacking in the main body of the book. A proposal by Thomas Petry of Syracuse to counteract leftist bias in public TV, however alarming it might seem to newsmen, provides a kind of coherence that rarely appears in the text. It is hard to avoid feeling that Keeley has had a workout at the cost of preempting a good subject for discussion.

DEFAMATION AND PUBLIC OFFICIALS: THE EVOLVING LAW OF LIBEL. By Clifton O. Lawhorne. New Horizons in Journalism series, edited by Howard R. Long. Southern Illinois University Press, Carbondale. \$15.

□ This is the seventh title in the enterprising "New Horizons" series. Like a number of other books in the sequence, it is a heavyweight survey of a broad subject, in this case the gradually developed legal rights to publish free, and even false, discussion of officeholders and other public figures. Although Lawhorne, chairman of journalism at Texas Christian University, provides an ample view of the classic English, colonial, and early national period cases, he rightly concentrates on libel law as it has developed in the last century—the age of the growth of mass media. He sees the Supreme Court decision of March 9, 1964, in *New York Times vs. Sullivan*, as climactic. The case, which arose from the 1963 Birmingham civil-rights demonstrations, not only laid out what Lawhorne calls a "charter of freedom" for the media but created a new national law of libel, binding on courts at all levels. The chapter describing the effect of the decision on state courts is especially valuable. This is not a stylish book, but it seems solid and dependable and well researched in printed court records.

J.B.

Selling of the Fire Department

—San Diego Union

Fire Chiefs Offer Awards To Newsmen

San Diego Union Staff Reporter
NATIONAL CITY — "We just think it's about time we did something about publicizing the services we provide for the public," said Fire Chief Lee Bacon in announcing the news media competition inaugurated by the San Diego County Fire Chiefs Association.

Bacon, who is chairman of the awards committee, said,

first competition will cover the period from July 1 to next June 30.

Winners in each of five categories will be awarded \$50 U.S. savings bonds.

There are two categories for newspapers, best story and best photo; two for television, best story and best camera work; and one for radio, best fire department-related broadcast.

"We've been at too many fire scenes where the newspaper photographer and television cameraman have taken pictures of a policeman giving advice or directing traffic and we thought that this contest might help induce these cameramen to show firemen at work," Bacon said.

Unfinished business

Heat on CBS

TO THE REVIEW:

For over a year now, I have been receiving your publication . . . and I have always found it to be essentially fair. Nevertheless, your most recent issue [July/August] prompts me to take strong exception to an editorial entitled "The Heat Goes On" which deals with the dispute over *The Selling of the Pentagon*.

As a member of the House Armed Services Committee, I have had several occasions to take issue with the Defense Department over its mismanagement of various weapons systems development. I have been pleased to see the news media criticize the handling of certain contracts. I would not quarrel with the premise that the Defense Department has committed certain errors in promoting one or another of the military services although the same criticisms could also be directed against other agencies.

The thing that really bothers me is the conscious effort of CBS to avoid answering to the specific charges of distortion which occurred in that documentary. That you should defend this attitude I find indefensible. Your position is the same as the network that "those offended by the program try to divert discussion to details in which CBS was vulnerable." It logically follows from this argument that the end must justify the means.

The editing of answers, clipping and rearranging them, the attribution of a quotation of a foreign leader as the actual words of an American officer being interviewed is unconscionable. Surely the network, which was months producing the documentary, could have made its case without resorting to these and other equally indefensible practices of reporting. In preparing an-

other "documentary," CBS staged a pot party at Northwestern University, but it was projected as an actual one.

I intend to vote against citing Dr. Stanton for contempt because a contempt citation would enable him to play the role of martyr and befog further the legitimate charges which have been made against CBS in *The Selling of the Pentagon*. I am, however, in favor of legislation which will require broadcasters to inform the viewing public when sentences are taken out of context, when events are staged which are not actual, and other means which would distort the truth. Mind you, they can continue to do these things but they are going to have to tell the public when they do it.

Finally, I would remind you of your own maxim printed on your inside front cover. As one elected by one constituency of this country, I feel that that charge is just as incumbent upon me as it is upon you and other members of the journalistic profession.

G. WILLIAM WHITEHURST
U.S. Representative
Second District, Virginia

EDITOR'S NOTE: "CJR" obviously does not hold that CBS or any other communications medium should be above answering "charges of distortion." We do hold that Congress is manifestly the wrong arena for such exercises. It should be noted, too, that CBS News president Richard S. Salant and others have responded publicly to specific charges. An article by Fred W. Friendly in the June issue of "Harper's" discusses these issues at length.

The "pot party" program mentioned was produced by a local CBS station, WBBM-TV, not by the network's news or public affairs personnel—a common misconception.

Reviewing Atlanta media

TO THE REVIEW:

Congratulations and thanks to the writers contributing to your

Atlanta Journalism Review experiment [July/August].

JOHN SLADE
Atlanta

TO THE REVIEW:

Many of us in Atlanta looked forward to your special section on our news media here, but we were disappointed that so little attention was given to the electronic media, except to count black employees and women.

About those women reporters: either Judy Woodruff or Jaci Hayward was left out of the count of our staff, or perhaps since the reporter counted Jaci as a black he couldn't count her as a woman as well. No doubt it's the new math.

ROBERT M. BRENNAN
News Director, WAGA-TV
Atlanta

TO THE REVIEW:

The Atlanta journalism supplement story on my encounter with the Georgia State Patrol [July/August] accurately reflected the events as I remember them, except for the misquoting of Jim Rankin, then city editor and now managing editor for administration for the *Constitution*.

For the record, Mr. Rankin said I should not make an emotional issue out of the obvious freedom-of-the-press question that the incident brought about. I did feel then, as now, that the issue of a free press was not given as much consideration as I felt it should have been.

Mr. Rankin did not, in my presence, say, "We want to cooperate with these guys." Such a quote would be out of character for him. What he did tell me, as I remember, is that he wanted to get the problem with the patrol settled because we were then facing a summer with the strong possibility of more racial violence in Georgia.

TOM SHERWOOD
Atlanta Constitution

'Lunches': wrong table

TO THE REVIEW:

I hope you can correct your REPORT ON REPORTS for July/August to read: "Lunches with Luce," by Gerald Holland, *Atlantic Monthly*, May, 1971.

ROBERT MANNING
Editor-in-Chief
Atlantic Monthly

The 'Bulletin' Replies: II

TO THE REVIEW:

Although the matter is of little significance, I feel that I should set the journalistic record straight with respect to Eugene Meyer's article ["The Knights Invade Philadelphia," May/June], William Dickinson's reply, and Mr. Meyer's "sniping" in return [UNFINISHED BUSINESS, July/August].

Despite Mr. Meyer's insistence, at no time have I discussed the question of who should be the *Bulletin's* "City Hall Bureau Chief" with anyone, including *Bulletin* editors and Thacher Longstreth, the Chamber of Commerce official now Republican candidate for Mayor, as Mr. Meyer described him.

As to Mr. Meyer's rather snide aside about civil rights and hiring, if he had checked he would have discovered that the *Bulletin* had a stated program for hiring blacks set in motion before we moved to our present plant in May, 1955, and that the graph of blacks hired shows a steady and consistent rise since then, to a figure approximating 20 per cent of our white-collar employees.

I might add that the *Bulletin* published Walter White's column for many years until his death in 1955. To my knowledge, the *Bulletin* was the first major newspaper to publish the weekly column of the late Whitney Young, and we continued it until his untimely death. We presently publish the columns of Roy Wilkins, Carl T. Rowan, and our own Claude Lewis.

Although I wrote Mr. Meyer a personal letter when he joined our staff, I did not get to know him. It's too bad that we apparently failed to get through to him our cardinal principle of accuracy and fairness above all.

Let me say also that I find it hard to understand how the editors of *CJR* work. No check was made with any responsible *Bulletin* executive regarding any of the allegations made by Mr. Meyer in his article. Then Mr. Dickinson's letter was referred to Mr. Meyer and he was given a chance to reply to it in the issue in which it appeared, without anyone at the *Bulletin* being checked.

ROBERT L. TAYLOR
President and Publisher
The Evening and Sunday Bulletin
Philadelphia

EDITOR'S NOTE: Mr. Meyer reiterates that he stands by the City Hall reference as printed; similarly, his statements concerning civil rights coverage and recruitment of black reporters (an issue separate from overall white-collar employment). Perceptions of the same situation often differ. Mr. Dickinson's and Mr. Taylor's statements now are on the record for readers to weigh.

APME's 'Guidelines'

TO THE REVIEW:

You are frequently critical, and rightly so, of newspapers which unfairly publish only one side of an issue. So we were amused, and disheartened, to see exposed the clay feet of *CJR* in the May/June issue.

We refer to the comments on "APME Guidelines" by the Iowa women who described the "Guidelines" as blatantly sexist. Their charges, made in a letter to APME, were offered to *CJR* by APME, along with a reply which APME had made. However, you chose to devote two full pages to the indictment and not a line to the accused's plea. You would not have patience with a newspaper whose coverage was so slanted.

We realize that you espouse the cause of women's lib, and so it is highly illuminating to count the names on *CJR's* masthead. There are twenty-one names. The first names indicate that only two are women, and titles are "subscription assistant" and "production assistant." As the Iowa women said of APME, "a couple of female secretarial types. . . . Hardly counts as having women in it at all."

Newspapers should strive to print both sides of an issue, give women equal opportunity and equal treatment with men, and practice what they preach. So should *CJR*.

DON CARTER
Executive Editor
Macon Telegraph and News;
President, Associated Press
Managing Editors Association

HARRY L. SONNEBORN
Managing Editor
Milwaukee Sentinel;
Chairman, Associated Press
Managing Editors Association
Publications Committee

EDITOR'S NOTE: The "Daily Iowan" staff members' manuscript was provided to "*CJR*" by Mr. Sonneborn, without reference to APME. We inferred that it was being leaked to us privately, since it had not at that time been published and was indeed critical of APME's "Guidelines." The manuscript's authors were paid, and with their permission it was edited into an article. A copy of a lengthy letter to the women from Edward Miller of the Portland "Oregonian" was considered and rejected as an article, mainly on the grounds that it was rambling, seemed only marginally responsive to the women's detailed critique, and seemed unrepresentative of recent APME pronouncements. We expected other members to respond after the article's publication; none but Messrs. Carter and Sonneborn have done so.

At no time until a letter of July 2 from Mr. Sonneborn—his first to us on an APME letterhead—was Mr. Miller's letter represented to us as an "official, considered" APME response. We are, of course, happy to publish it as such [page 62].

Minority-group programs

TO THE REVIEW:

The phrase "sputtering badly" as applied to the summer training program of the Association for Education in Journalism [PASSING COMMENT, July/August] is a subjective judgment that may mean different things to various individuals. I believe that for most readers it downgrades the actual responses and effort that went into the 1971 project, which this summer had fifteen minority-group students on the Washington Square campus of New York University for a ten-week work-study experience.

Thanks to monumental efforts of Dr. Lionel C. Barrow, Jr., chairman of the AEJ Minorities and Communications Division, more money was raised for the nonsalary portion of the program's budget than last year. Pledges and cash in hand for 1971 were \$15,682; the 1970 income was \$10,434.

Because some 1970 interns faced financial difficulties when they returned to their home campuses, AEJ and NYU paid the students' room, board, and travel expenses, permitting them to save more money for the next college year; last year, each participant paid his own travel and board. Naturally, this increased per-intern costs. The number of students in 1970 was seventeen; in 1971 it was fifteen.

Six firms that took 1971 students also paid full overhead for interns' tuition, room, board, and travel. Presentations to more than a half-dozen large foundations were fruitless, but the funding was obtained from media-oriented organizations and the NYU Institute of Afro-American Affairs. Among substantial contributors: American Society of Magazine Editors, Cowles Communications Fund, Meredith Broadcasting, the New York Times Foundation, Public Relations Society of America, RKO General Broadcasting, Texaco Foundation, Trafco, Sigma Delta Chi, Theta Sigma Chi, U.S. Catholic Conference, and the *Wall Street Journal*.

Individual AEJ members, as well as the organization, have supported

the project. Also they raised approximately \$500 for a graduate student in communications to use in the 1971-72 college year. Other members have worked with the predominately black colleges in the South when asked for information and counsel.

AEJ activities for minority-group students could, of course, be expanded if more money was available. For instance, a request for \$400,000 over three years was submitted more than two years ago to a large foundation. To date, no money has been received. AEJ hopes to increase its 1972 internship projects to at least two and possibly three across the country. Continued support from media will make this possible.

HILLIER KRIEGHBAUM
President-elect
Association for Education
in Journalism;
Professor of Journalism
New York University

For the record

TO THE REVIEW:

Nicholas von Hoffman [NOTES ON THE ART, July/August] says "we have people like Eleanor Lambert paying reporters' airplane and hotel bills."

I have never personally paid any reporter's hotel or transportation bill for any purpose. Organizations I represent have in times past offered to pay a reporter's transportation to the National Fashion Press Weeks if the policy of her newspaper is such that the newspaper will accept a refund for this transportation. No organization I do or have represented has ever paid hotel bills. The practice of refunding transportation costs was abandoned many years ago as there were too few acceptances of the fare to make it worthwhile.

ELEANOR LAMBERT
Eleanor Lambert, Inc.
New York, N.Y.

Distinction or difference?

TO THE REVIEW:

In the February *Hawaii Journalism Review* there appeared a take-out on the Hawaii Newspaper Agency's advertising supplement, "Dining Out," in which at least one paragraph was inaccurate. A correction was published in the March issue. However, the May/June issue of *Columbia Journalism Review* did not carry it. It is:

"In Denby Fawcett's February article on the Hawaii Newspaper Agency's advertising supplement 'Your Guide to Dining Out,' Mrs. Carey is quoted as saying she asked Buck Buchwach 'for a legitimate restaurant column but he turned her down, saying it would cost too much money.' That's what Jane Carey—if quoted correctly—told Denby Fawcett that I said, but not what I said nor why I said it. . . ."

"The fact is that Jane Carey, when an HNA employee, asked me if the *Advertiser* were interested in running its own restaurant column, with no connection with the Hawaii Newspaper Agency. My reply, which still holds, was no.

"A fulltime restaurant critic is a luxury (salary, plus restaurant tabs for food and wine, plus mileage) enjoyed by the *New York Times* and maybe a couple of other newspapers in the U.S. Neither we nor any other newspaper in the U.S. of our size can afford such. The additional budget that would be required for an *Advertiser* restaurant editor could far better be spent for another consumer affairs writer, another business writer, another education writer, another environment writer. It's a matter of priorities."

I want your readers (as well as *Hawaii Journalism Review* readers) to know that: 1) the Guide to Dining Out in Honolulu's Sunday newspaper is not a product of our editorial staff but an advertising supplement, labeled as such; 2) I deny (loudly) that I am for illegitimate restaurant columns and against legitimate ones.

BUCK BUCHWACH
Executive Editor
Honolulu Advertiser

APME's 'Guidelines' a 'sexist document'? An editor's reply

EDITOR'S NOTE: The following comments, by the retired managing editor of the Portland "Oregonian," have been abridged by "CJR" from the Associated Press Managing Editors' "official, considered" response to a critique by seven woman members of the "Daily Iowan" staff [CJR, May/June].

□ Your critique 1) presents an estimate of "APME Guidelines" as a "blatantly sexist document" and 2) utilizes strong words to generalize on "the state of American journalism and its relationship to women's rights". Your aggressive affirmations concerning woman-man relationships splits wide a can of snakes that has dismayed philosophers, wives, husbands, and simple people like managing editors since the beginnings of recorded history. It was your choice to bedevil the snakes, so let us begone with reticence.

The Lord Almighty in His infinite though debatable wisdom created two sexes. His main purpose in so doing was to insure perpetuation of the species, but other reasons for establishing two sexes are less evident. Perhaps the creator of our Creator put something of the pixie in His makeup. Just possibly He relishes a sense of humor. In any event, the makings for a lot of joy, jangling, and incongruities were doled out when it was determined that men should strut and women should trip them.

If you say this is kindergarten stuff, I will say you may have forgotten your biology lesson.

The mechanical and glandular variations between women and men are not very important in the production of a newspaper. A man's ability to throw a rock farther than a woman offers no advantage in tossing verbs, nouns, and adjectives into a reporter's typewriter.

Our Friend on High did create certain male-female differences which do not meet the eye, but do meet and master managing editors. To these differences we have given such tags as instincts and emotions. As derivatives we note other manifest characteristics such as intellectuality, imagination, stability, courage, determination, and many other indices of the human mind and spirit.

We all know that varied instinctive, emotional, and sexual drives which motivate our species have placed women through the centuries in the basic roles of rearing children and maintaining the home, and have impelled men to the battlefield and to provisioning the family.

An undetermined number of women (I believe the percentage of all women is rather small) assume that association with the world of commerce automatically enables them to disembowel the instinctive drives which have determined their basic reactions through the millennia.

It just won't work. Women cannot obliterate their very essence by an act of will. Neither women nor men can alter or escape the magnificent and miser-

able qualities that make them what they are. He that created us made the decision long, long ago and we must live with it whether we like it or not.

It appears you don't like it, that you deem painful the abrasions you encounter in our man-woman existence. Well, Fair Ladies, I have been sore at times that a great many individuals could run faster, talk more convincingly, make more money, and generally cut a wider swath than I. But I have learned to live with an old, old truth that serenity comes from making the most of modest talents and opportunities and that hurling a howl into a gale summons very few groceries.

The essential feminineness of the feminine sex is boldly assertive in readily identified manifestations.

First, the zeal with which a woman protects her own: her children, her husband, her home, herself, her job, her status, her mores, her boss. She is the most personal of creatures and she is strongly disposed to translate the world's goods and works into terms of her own being. She is wonderful in her loyalties. But her claws are sharp when her realities, as she sees them, are threatened.

That's why most women do not make good administrators—because they tend to look inward rather than outward. This may surprise you, but a boss to be truly successful must be a selfless person in her or his relationships with associates. The bosses' own wants, on a day-by-day basis, must be subordinated to the needs, the problems, and the aspirations of subordinates.

Generally speaking, women are either uncomfortable or unsuccessful in the executive role because of the difficulties they encounter in divorcing their personal feelings and ambitions from the job at hand. This leads to unhappy subordinates and inefficient production.

A woman's womanness shows up consistently in the concentration of her interests. She is primarily intrigued by people and the interrelationships of people. In the newsroom she does extremely well on bread-and-butter news stories and often is unexcelled on features delineating people's doings.

If you assign her to unravel a complicated financial story she is apt to fall apart.

Most women do not make very good investigative reporters because they have difficulty in sorting out the essentials from the nonessentials. Most beats on a newspaper can be handled admirably by a woman—providing she is interested in the work. If they have their druthers, a high percentage of girls choose the once-over-lightly stories in preference to the kind that require determined digging for information.

Strong dissent must be taken to your statement that "instead of being accorded the treatment which any human being might rightfully expect, we are sneered at, made to look small and insignificant . . . we are given the most meaningless tasks. . . ."

Come off it, girls, that statement just isn't true.

You haven't dug for your facts. Women are valued for what they can do, and what they do is plenty. There are scores of women reporters and editors whose performance is excellent by any standard. In the hard-news field, for example, the Associated Press has had a succession of very successful women financial writers, the latest being Carole Martin. One of the best investigative reporters in the U.S. is Jean Heller of the AP special assignment task force in Washington, D.C.

Women become excellent copy editors. They are patient, careful, cheerful, and the repetitive nature of the work does not seem to bother them.

Your document imparts the strong impression that you believe worthy work must carry a glamor label, like being a big-shot star reporter, publisher, or managing editor. One is led to the conclusion that your values pertaining to human endeavors are confused. All work is important if it serves a useful purpose and is satisfying to the worker.

Girls, we like you. You don't like us (and your job) nearly as much as you like that certain young man and the prospect of a home radiant with two or three children. You will—have no doubt—follow that certain young man right out of the newsroom to delights or disaster.

Are we angered because women marry and have children? Of course not. We have admired them, enjoyed them, and in each instance have been delighted at each individual's prospect for the happiness of her choosing.

The seasoned managing editor seeking a stable staff knows well the hazards of employing young women. He has learned to give preference to older women who have worked out their domestic situations sufficiently to permit reasonable adherence to office obligations.

From the standpoint of women, what can be done about it? Above all, you might as well be realistic. Wise is the young woman who realizes that a career without the solace of a family may become a heartless mirage, and that she runs a risk of becoming hardened and embittered by the frustrations of competition for supervisory positions.

The woman who elects to combine career and marriage (without a break for child-rearing) runs this hazard: she must be companion to a husband, mother to demanding children, homemaker, hostess, and career worker. The odds are that sooner or later her energy will fall short. Comes the day when her bag contains disillusionment and perhaps divorce. Then she may wish she had delayed job-seeking until the relaxations of middle age.

A sorting of priorities may be helpful to a young woman contemplating her future. Let's assess some factors significant to your prospects for happiness.

First, you are today, yesterday, tomorrow, always, an individual. A person. A particular person. No one is exactly like you. You will live with yourself to your destined day as you will live with no one else. Ofttimes you will be lonely, but you have your own star to follow as you seek your fate, your kismet, or your joy in just being alive. Your very own being is

transcendent and should not be subordinated to the vagaries of sexual considerations.

Second, the respect due yourself as an individual must be accompanied by selfless service to others. This is an unrelenting ingredient of happiness for you. Your basic satisfactions will be attained in your contributions to your family, your occupation and to your community. Again, sex is not a factor.

Third, to attain substantive contentment you must acquire competence in your job, no matter how impressive or modest that job may be, whether in the home or in business. All of us must utilize our talents as best we can and as happenstance bestows them. This applies to both men and women and has nothing to do with sex.

Fourth, regardless of creed or want of it, every individual must somehow latch onto that Stream of Life that carries all of us, we know not where. We must make the effort if we set store in something akin to serenity, and it matters not if we are male or female.

Fifth, remember well that laughter is companion of the strong, solace of the weak and the weary, and we must learn to embrace it. The individual of dour heart and visage may acquire much money, but she or he will draw a poor house to hear the final hymn. Yea, man or woman.

Finally, way down the totem pole is the fact that we are women or we are men. The men posture, brag, tremble when ill, and are itched with an ever-hungry ego that requires nourishment—particularly from women. Only little children, particularly little girls, are blind to the fragility that is man. Women are delightful to men and likewise utterly impossible. They are faithful and fickle. Energetic and lazy. Beautiful in spirit and bitchy to perfection. On balance, a woman does pretty well. I don't think American women have too much to holler about.

So, girls, we come to the end of this prolix response to your plaints. I hope it will contribute to your perspective in matters that are troubling you, and will provide some background for a question you should decide: Is my concern for women's rights a splendid steed vaulting me toward a glorious horizon, or am I forked on a nag, a hobbyhorse teetering to destination nowhere?

As for "Guidelines," I am sorry it offended you. The authors were using such terms as "newsmen" in the generic sense. The messages were intended to apply both to men and to women. Most of the cartoon shafts were aimed at managing editors. The authors are not a sexy lot, and I am surprised if it seemed so in their writings.

To capsule this pontification, may I ask that you consider well: to live is to laugh, and to laugh is to live. Smile yourself into a newspaper job, if that be your wish, with the expectation you will have a ball. Meanwhile, send up a prayer to the Old Dealer requesting the deck be stacked in your favor. Good luck.

EDWARD M. MILLER
Editor of "Guidelines"

REPORT ON REPORTS

Summaries and reviews of current literature in journalism

"Free Press and Fair Trial: Some Dimensions of the Problem," edited by Chilton R. Bush, University of Georgia Press, 1971.

An interesting if not particularly novel collection of four essays written by three journalism professors; the appendix includes texts of Press-Bench and Bar agreements.

"Labor Stories That Ooze, Trickle, and Seep," by Gene Roberts, Bulletin of the American Society of Newspaper Editors, May/June, 1971.

A former labor reporter, now a New York Times editor, catalogues difficulties in covering the present-day work force, its organizations, and its activities, and makes suggestions for improvement.

"How Book Reviews Make or Break Books—Or Have No Impact," by A. Kent MacDougall, Wall Street Journal, June 9, 1971.

In fascinating detail, a *Journal* staff member discusses why "the relationship between a book's critical reception and its sales success or failure can be mysterious and unpredictable."

"Black Voices and Format Regulations: A Study in Black-Oriented Radio," by Anthony J. Meyer, S.J., ERIC Clearinghouse on Media and Technology, Stanford, Calif., May, 1971.

In a well documented report based on interviews and a review of thirty FCC license applications, a member of Stanford's Institute for Communication Research argues that real change in black-oriented radio can take place only through "community organization control of a 'non-profit' broadcasting facility" and/or "forceful containment of the maximal profit motive in present ownership."

"Reporters and Their Sources: the Constitutional Right to a Confidential Relationship," Yale Law Journal, December, 1970.

An extensive and informed analysis concludes that "subject to carefully delineated exceptions applicable to criminal trials and certain libel actions, the First Amendment should guarantee a broad right to keep communications and the identities of informants confidential. . . ."

"The New Journalism," by James Ridgeway, American Libraries, June, 1971; "Long-Hair Mags May Make It," by John Peterson, National Observer, June 21, 1971; "Medium or Message," by Lynne Williams, Barron's, May 24, 1971.

The former co-publisher of *Hard Times*, now an editor of *Ramparts*, surveys modern alternatives to the established mass press; a *National Observer* staff member argues that the "new genre" of national magazines (such as *Rolling Stone*) "promise to revolutionize the publishing industry as surely as other long-hair efforts have changed music, fashion, and politics"; and a *Barron's* writer comments on the psychology and economics of "magazines which cultivate a select readership."

"A Bibliography of Doctoral Dissertations in Television and Radio," compiled by Kenneth R. Sparks, Newhouse Communications Center, Syracuse University, 3d edition, 1971.

A new edition of a useful work.

"Critics' and Public Perceptions of Violence in Television Programs," by Bradley S. Greenberg and Thomas F. Gordon, Journal of Broadcasting, Winter, 1970-71.

In early research for the U.S. Surgeon General's Scientific Advisory Committee on violence and the mass media, a Michigan State professor and a graduate student conclude that critics rate programs as more violent than do viewers; women regard some programs as more violent than do men; and men more often watch violent programs than do women.

"How the Second-Best Informed Man in the White House Briefs the Second-Worst Informed Group in Washington," by James M. Naughton, New York Times Magazine, May 30, 1971.

An ascerbic profile of press secretary Ronald Ziegler by a *Times* Washington reporter.

"The Stories Reporters Don't Write," by John Rothchild, Washington Monthly, June, 1971.

Managing editor Rothchild argues that all too often "critical stories" remain "inside reporters' notebooks" out of fear of losing sources.

"What the Big Dailies Don't Tell You About What's Going on in the City," by Jack Deacy, New York Magazine, May 24, 1971.

An excellent in-depth analysis of New York City neighborhood weeklies which thrive on news that "doesn't fit into the scope" of the big dailies.

DANIEL J. LEAB

the lower case

Blue Skies Unless It's Cloudy

—San Francisco Chronicle, May 29.

You And Your Job

His Sloppy Resume Isn't Lilely To Help

—Bergen County, N.J., Record, April 28.

Ex-Sen. Hill cited for mental health progress

—Birmingham, Ala., News, July 25.

N.L.R.B. Bars Picketing If Union Is Working on Bias

BOSTON, July 31 (UPI)—Not a single case of smallpox was reported anywhere in the world last year, according to the head of the National Academy of Sciences.

—New York Times, Aug. 1.

Draws Inference

One House member drew a strong inference from Mr. Nixon's remarks that there are no stings attached to the visit involving a Vietnam settle-

—Los Angeles Times, July 20.

comment on the charges.

The organizations sent letters to Milnes asking the surveillance be halted and to Kramer seeking to present F. B. I. infection of the records.

—Seattle Times, June 2.

The police said the man entered the room at 5:15 P.M. with a craving knife and robbed the two of \$190 in traveler's checks and \$37 in cash.

He forced the aunt, into a closet threatened to kill her if she did not agree.

—New York Times, July 18.

Pope To Be Admitted To Vt. Bar

—Brattleboro, Vt., Reformer, Jan. 15.

Asked whether his relationship with Mrs. Nixon had remained "correct but arms-length" Burger replied:

"The president is a lawyer. I am a lawyer. We both understand this. I am sure that that

—Washington Post, July 6.

Jean-Claude Duvalier, the world's youngest chief of state, in his "poster pose."

Ann Landers will be glad to help you with your problems. Send them to her in care of the Minneapolis Tribune, enclosing a self-addressed stamped envelope.

—Minneapolis Tribune, May 18.

APARTMENT IN LAUREL. POLICE SAID THE DRIVER OF THE TRUCK HAS BEEN CHARGED WITH FAILING TO DRIVE ON THE RIGHT OF THE CENTER LINE. THE ACCIDENT OCCURRED ON SANDY SPRING ROAD NEAR HAC KNEW ROAD. POLICE ARE WITHHOLDING THE MAKE OF THE TRUCK DRIVER.

—UPI, D.C. Area, July 8.



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—News Release, Professional Photographers of Oregon, Inc.

Second reading

**"I benefit
from your probing,
from your criticism..."**

■ ... I feel that in the times in which we live, particularly, it is important that the decisions that are made by whoever holds the highest office in this land be the very best possible decisions. If they are to be the best, the man who makes them must always be held very, very high to the mark. He will tend to relax a bit, if he isn't constantly subject to criticism. I guess Winston Churchill put it the best when he said several years ago that he had always found that he benefited from criticism and he never found that he did not have enough of it. I am in somewhat of that position. I can only say that the Washington press corps, from the time that I began to know it twenty-four years ago, and when I have known it best as President, has held me right up tight to the mark. Their questions have been hard. They have been tough and I like them that way.

Don't give me a friendly question. Only a hard, tough question gets the kind of an answer—you may not like it—but it is only that one that tests the man. And it is the responsibility of the members of the press to test the man, whoever he is. You have done that. You have met that responsibility. And I, of course, will try in my own way to meet mine.

... I do know this: that the relationship of the President with the press is a very special one. It is one that is very important to both. It is one where sometimes we both fail. I can only say I benefit from it. I benefit from your probing, from your criticism, and if I succeed—and that means if the country succeeds in these great goals—then it will be due not simply because of what I did or my advisers helped me do, but will then be due in great part to the fact that the members of the press examined searchingly everything that I suggested, every recommendation that I made, and made it necessary for me to come up to the mark and do just a little bit better than I would have done if somebody there hadn't been pressing.

So thanks for giving me that heat. And remember, I like the kitchen. Keep it up.

**—President Richard M. Nixon,
Annual Dinner, White House
Correspondents Association,
May 8, 1971.**

**Quoted by the Associated Press
Managing Editors Association,
'APME News,' July, 1971.**

